

TAXATION:  
ASSESSOR:

Assessor is entitled to compensation for list for each joint owner of real estate in tenancy in common, joint tenancy or separate real estate of husband and wife.

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February 19, 1941

Mr. W. A. Holloway, Chief Clerk  
State Auditor's Office  
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of February 15, 1941, which reads as follows:

"Subsequent to statutory revisions made by the 59th General Assembly defining an assessment list, several questions have arisen concerning a specific definition of an assessment list, particularly as pertaining to compensation. We would, therefore, appreciate your opinion of the following questions: .

"1. Is the Assessor entitled to the compensation prescribed for an assessment list for each joint owner, if the assessment list is signed by said joint owner?

"2. Is the Assessor entitled to compensation for such list if such list is made by the Assessor, presuming in each case that such joint owner has no other assessment?

"3. Is the Assessor entitled to the thirty-five cents per entry for entering the interest of each joint owner on the tax book as described?

"4. What is the effect of Section 9793, R. S. Missouri 1929, toward the definition of an assessment list, particularly dealing with the question

of joint ownership of real estate?"

All of the above four questions in your opinion request can be answered under one heading.

Section 10950, R. S. Missouri 1939, which was enacted as Section 9756, Laws of Missouri, 1937, page 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. \* \* \* \* "

It will be noticed under the above partial section that it applies to personal property and real estate and requires the person who has an interest in both the personal property and real estate to make a return upon the blank furnished him by the county assessor. This section does not say that the assessor shall make the return, but if the person does not make a return the assessor, by other sections, is authorized to make a return both as to personal property and real estate. This partial section further requires that any person having charge or management of property in the county shall make a return. All through the section it is the intention of the Legislature that the person owning or having management of the different kinds of property shall make a return.

Section 10996, R. S. Missouri 1939, which was the amended laws of Section 9806, R. S. Missouri 1929, as amended by the Laws of Missouri 1931, page 358, partially reads as follows:

"The compensation of each assessor shall be thirty-five cents per list in counties having a population not exceeding forty thousand, thirty cents per list in counties having a population of more than forty thousand, and not exceeding seventy thousand, and twenty-five cents per list in counties having a population in excess of seventy thousand inhabitants, and shall be allowed a fee of three cents per entry for making real estate and personal assessment books, all the real estate and personal property assessed to one person to be counted as one name, one-half of which shall be paid out of the county treasury and the other half out of the state treasury: \* \* \* \* \*

Under the above section the payment for the preparation of the list in different counties varies in accordance with the population of the county. Under your ques-

tion number 3, which will be answered later on, the amount in some counties may be thirty-five cents, thirty cents or different amounts.

In the case of joint tenants in common, which would happen in case of a partnership owning real estate and personal property, and where the question of survivorship is not involved, each of the owners of the undivided interest in the real estate should make a return as to the amount of interest he owns in the real estate. In the case of a partnership consisting of three members, sharing and sharing alike, the three members of the partnership should make a return to the assessor as to his interest in the real estate. This would require the making up of three lists by the county assessor.

In your request you refer each time to the words "joint owner." The above example is the case of one class of joint ownership. Another class of joint ownership is that of joint tenancy. Of course, in the case of joint tenancy the grantees of a deed in that nature must receive a deed which refers to the question of survivorship or they would still be considered the same as joint owners in common. In the case of a joint tenancy, which means that the real estate is owned by two or more joint owners with the right of survivorship involved, either of the joint owners may sell his interest in the real estate which would automatically destroy the question of joint tenancy in the property, and since under a joint tenancy one of the owners can sell his interest, it is such an interest that he must personally make a return to the county assessor. In such tenancies, that is, joint tenancy, each of the joint owners must make a return to the county assessor and the county assessor must prepare a list showing the interest and the value of each of the joint owners under the joint tenancy.

Under Section 10950, R. S. Missouri 1939, 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 collection 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. Missouri 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."

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. 989, 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.

The fourth question asked in your request, which reads as follows:

"What is the effect of Section 9793, R. S. Missouri, 1929, toward the definition of an assessment list, particularly dealing with the question of joint ownership of real es-

tate?"

is not applicable to the question of joint ownership of real estate but is merely a "cure all" section to make the real estate responsible for the taxes even though there is a mistake made in the name of the owner or possibly the wrong owner.

#### CONCLUSION

In view of the above authorities it is the opinion of this department that where several persons own real estate and personal property in common each owner has such an interest in the property that he must make a personal return of his property owned by him in common with others as set out in Section 10950, R. S. Missouri 1939, and the assessor must prepare a list from his turn in showing the valuation and interest of each joint owner in common in the property turned in by the respective joint owners in common.

It is further the opinion of this department that joint owners of real estate and personal property, by joint tenancy, which involves the question of survivorship, shall separately make a return of their real estate and personal property which is involved in the joint tenancy and the question of survivorship does not prevent them from making a separate return as to their interest in the personal property or real estate for the reason that under the law they are permitted to sell their interest in the joint tenancy which automatically destroys the question of survivorship under the joint tenancy.

It is further the opinion of this department that in case property is owned by a husband and wife as tenants by entirety there should only be one turn in to the assessor as to the property owned by the husband and wife for the reason that under the law in an estate by entirety the husband and wife are considered one person and neither of them could dispose of their separate interests in the real estate owned by them by entirety but to dispose of the same both of them must sell at the same time.

Mr. W. A. Holloway

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It is further the opinion of this department that where persons are required to turn in their property, both personal and real estate, which is held either in a tenancy in common or by joint tenancy, they should include in their turn in other property held by them. In the case of a turn in on real estate by entirety, if the husband and wife own other real estate which is in their name other than by entirety, or if they own personal property individually they should make a separate return as to the real estate and personal property owned by them as individuals, and the assessor should be required to make a list for not only the real estate held by entirety but also to make a separate list of their individual property not held by entirety, and he should be allowed the fee allowed in that county for making the list. There may be, for a husband and wife, as many as three lists, as for example: A husband and wife own a piece of real estate by entirety. This would be a separate list. The husband may own a piece of property in his own name. This would be a second list, and the wife may own a piece of property in her own name. This would be a third list.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

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