

TAXATION:

Omitted personal property on a return to the assessor cannot be assessed as to previous years.

May 21, 1941

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Honorable Robert P. C. Wilson III
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Sir:

We are in receipt of your request for an opinion under date of May 17, 1941, which reads as follows:

"A short time ago a wealthy man in this county died. In years heretofore, including the present year, it had been his custom to turn in to the County Assessor a list of but a few hundred dollars in personalty to be taxed. It now develops that he may have as much as one hundred thousand dollars in stocks and bonds which he has never turned in to the Assessor. I respectfully request an opinion from your office on whether or not there is any way for the county to collect any taxes on this property above the amount he has been in the habit of turning in."

In the case of City of Hannibal ex rel. v. Bowman, 98 Mo. App. 103, l. c. 108, the court said:

"There is, therefore, no such thing as an equity in a county or in a city that will authorize an assessor, after he has completed his assessment and turned over his books to the proper officer and after his assessment has passed the boards of equalization and of appeals, to repossess

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himself of the assessor's books and enter therein personal property, which by accident or intention was omitted from the list furnished by the taxpayer and which escaped the notice of the assessor. He can only proceed at the time and in the manner pointed out by statute and to justify his assessment he must be able to put his finger on the statute that gives him the authority to make it. Welty on Assessments, p. 36; Cooley on Taxation (2 Ed.), p. 42, note 3; Hamilton v. Amsden, 88 Ind. 304; Whitney v. Thomas, 23 N. Y. 281. The assessment is the basis of the tax. Therefore, if the assessment is void it necessarily follows that the tax is likewise void. The State ex rel. Wyatt v. The Wabash R'y Co., 114 Mo. 1. c. 11; State ex rel. v. Edwards, 136 Mo. 360; State ex rel. v. Thompson, 149 Mo. 441."

Also, in the case of Tumulty v. District of Columbia, 102 F. (2d) 254, pars. 7, 8, the court said:

"* * * * But it is a well known rule of law that in the absence of statutory provision for reassessment for prior years, none can validly be made. Faced with a valid assessment, the action of changing the names of field books, tax ledgers and tax bills, instead of those originally found there, would, in fact, be a reassessment of property regularly assessed. When property has once been finally assessed it cannot be again assessed. Commonwealth v. Robinson, Norton & Co., 146 Ky. 218, 142 S. W. 406; City of Georgetown v. Graves' Adm'r, 165 Ky. 676, 178 S. W. 1035. It is not the policy of the law to favor reassessments. Unless

the taxing statute expressly provides for a reassessment, such action is void. State v. April Fool Gold Min. & Mill. Co., 26 Nev. 87, 64 P. 3. If the property has been validly assessed against its owner, the liability becoming final, there is no power in the statute for a revision of the assessment or the reassessment of the property. People's Sav. Bank v. Layman, supra."

Also, in the case of State ex rel. Ford Motor Co. v. Gehner, 325 Mo. 24, l. c. 32, the court said:

"No doubt if specific real property is overlooked or omitted it can be subsequently assessed for the previous omitted years, but can it be said the personal estate was omitted when as in this case a lumping assessment is made in one year and the taxes extended and paid, and the next year another equally general description is made the basis of a back assessment, only increased in amount. How can it be known that the same property is not at least partially assessed twice for the same year. This is not a technical reassessment, but is the ex parte act of the assessor only, correcting his first assessment, without notice to the taxpayer, and without opportunity to be heard before the board of equalization.

"This ordinance permits the assessor, not the county clerk, to extend the arrearages of taxes. The general statutes of the State only permits this back assessment of real estate and they govern in the city as well as the county. (R. S. 1889, sec. 1902.) But conceding that the ordinance is valid, still we think

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the back assessment when compared with the alleged omitted year should show on its face the specific property omitted, and unless it does so it is void. It necessarily follows that without reference to other points raised, the so-called back assessment for the year 1891, did not constitute any ground of liability and the court erred in not sustaining the objection to the evidence of plaintiff and in not finding for defendant on said count.'

"To the same general effect is Hannibal ex rel. v. Bowman, supra. If the assessors in the Buehrmann and Bowman cases were without authority to assess additional personal property where the taxpayer in the previous years had returned an insufficient amount of such property, how can it be possible that respondent assessor may go back two years to make an additional assessment for income actually appearing on the face of relator's return which was not taxed because relator, with the concurrence of the assessor at the time and without subsequent challenge from the board of equalization, was knowingly permitted to omit same from the assessment as a claimed deduction?

"Respondents cite Sections 12819, 12801 and 12969, Revised Statutes 1919, in support of the contention that respondent assessor had jurisdiction to correct the omission in relator's 1926 income-tax assessment. Section 12819 provides a scheme for subsequent assessment and collection of taxes where 'there has been a failure to assess the property in any county for any year or years.' This section covers the situation where the entire assessment for the county has been omitted for any year or the assessment sought to

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be made has been held void for some reason. The section has no application to the omission of assessable personal property from the return of an individual taxpayer. * * * * "

Under the holdings in the above cases, they specifically state that real estate which has been overlooked or omitted can be assessed for the previous omitted years but the personal property, when omitted, cannot be reassessed for the previous years.

CONCLUSION

In view of the above authorities it is the opinion of this department that when a private person does not make a true return of his personal property to the assessor and the books of the assessor have been closed the omitted property for the previous years cannot be assessed.

Respectfully submitted

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APPROVED:

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