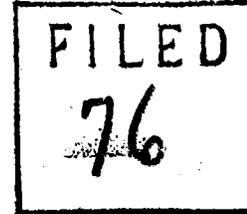


TAXATION AND REVENUE: Method of adding omitted property to assessment rolls.

June 25, 1945

Honorable Horace T. Robinson
Prosecuting Attorney
Waynesville, Missouri



Dear Sir:

Reference is made to your letter dated June 18, 1945, requesting an official opinion of this office, and reading as follows:

"I have been informed by the members of the County Court of Pulaski County that they have found that a considerable number of residents of the County were not assessed by the Assessor as of June 1, 1944, and that the names of such persons did not appear on the books from which the county valuation was certified to the State Auditor. Inasmuch as a correction of this inadvertence would necessarily involve the Auditor's records, it seemed proper that your office should determine what procedure, if any, could be followed to require payment of taxes this year by those not so assessed.

"I have made a cursory examination of the statutes, and Sec. 11000, R. S. 1939, seems to be in point, though the decisions do not seem to be very clear. The question arises, of course, first whether the assessment may be made of those omitted from the books, when the assessment should be made, and by what assessor.

"The indications are that a considerable amount of taxes will be lost, unless this

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oversight may be remedied. The shortage of time before collection of the taxes will be required, makes it important that early action be taken in the premises."

You have not indicated in your letter of inquiry the nature of the property omitted; this is pertinent for the reason that different modes of procedure are applicable to the addition of real and personal properties which have been omitted from the assessment rolls.

At first glance, it might be thought that Section 11000, R. S. Mo. 1939, provides a means by which any omitted property might be added to the assessment rolls. Said section reads, in part, as follows:

"Whenever, for any cause except when exemptions have been granted by law, there has been a failure to assess the property in any county for any year or years, the assessor of said county for the time being shall assess the property for the year or years in which said failure shall have occurred. * * * "

However, it has been held that this section is applicable only when there is a complete failure to make any assessment in the county or when such assessment shall have been held void for any cause. We quote from *State v. Gehner*, 27 S. W. (2d) 1, 1. c. 5:

"Respondents cite sections 12819, 12801, and 12969, R. S. 1919, in support of the contention that respondent assessor had jurisdiction to correct the omission in relator's 1926 income tax assessment. Section 12819 (now Section 11000, R. S. Mo. 1939) 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

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where the entire assessment for the county has been omitted for any year or the assessment sought to 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. State ex rel. Howard v. Timbrook, 240 Mo. 226, loc. cit. 240, 144 S. W. 843, cited by respondents, held this section applicable where the entire assessment for the year was void."

Since additions to the assessment rolls of omitted property cannot be made under the statute quoted, we necessarily must search further for authority to add such omitted property. We shall consider the method to be pursued with respect to personal property separately from that to be followed with respect to omitted real property, as in certain features different modes must be adopted for the purpose of adding such omitted property to the rolls.

There are two statutes relating to the addition of omitted personal property. Section 11006, R. S. Mo. 1939, reads, in part, as follows:

"The county board of equalization, at its annual meeting in each year, in addition to the powers now conferred by law, shall have authority to assess and equalize the value of any property that may have been omitted from the assessor's books then under examination by said board, and in case said board shall add any property, real or personal, to said assessor's books, it shall cause notice in writing to be served upon the owner of such property, * * * ."

You will note from the wording of the statute quoted that proceedings taken by the county board of equalization can relate only to property omitted from "the assessor's books then under examination by said board." This necessarily restricts the right of the county board of equalization to the addition of property omitted from the last assessment. We quote from City ex rel. v.

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Bowman, 71 S. W. 1122, reading, in part, as follows:

" * * * 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 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.
* * * "

We conclude from the above that upon adjournment of the county board of equalization, no statutory authority then exists by which the county assessor might add omitted personal property to the assessment rolls.

However, there is a further statute providing a means by which such property may be subjected to taxation. Section 11028, R. S. Mo. 1939, reads as follows:

"After the various assessment rolls required to be made by law shall have been passed upon by the several boards of equalization and prior to the making and delivery of the tax rolls to the proper officers for collection of the taxes, the several assessment rolls shall be subject to inspection by the commission, or by any member or duly authorized agent or representative thereof, and in case it shall appear to the commission after such investigation, or be made to appear to said commission by written complaint of any taxpayer that property subject to taxation has been omitted from said roll, or

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individual assessments have not been made in compliance with law, the said commission may issue an order directing the assessing officer whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered, at a time and place to be stated in said order, said time to be not less than five days from the date of the issuance of said order, and the place to be at the office of the county court at the county seat, or at such other place in said county in which said roll was made as the commission shall deem most convenient for the hearing herein provided. A copy of said order shall be published in at least one newspaper published in said county, if there be one, at least five days before the time at which said assessor is required to appear; or, where practicable, notice by mail may be given prior to said hearing to all persons whose assessments are to be considered. A copy of said order shall be served on the assessing officer at least three days before he is required to appear with said roll. The commission, or any member thereof, or any duly authorized agent, shall appear at the time and place mentioned in said order, and the assessing officer, upon whom said notice shall have been served, shall also appear with said assessment roll. The commission, or any member thereof, or any duly authorized agent thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected, or liable to be affected by review of said assessments thus provided for, may appear and be heard at said hearing. In case said commission, or any member or agent thereof who is acting in said review, shall determine that the assessments so reviewed are not made according to law, he or they shall, in a column provided for that purpose, place opposite said property the lawful valuation of the same for assessment. As to the property not upon the assessment roll, the said commission, or member or

agent thereof, acting in said review, shall place the same upon said assessment roll by proper description and shall place thereafter in the proper column the value required by law for the assessment of said property. The commission shall also spread upon said roll a certificate signed by each member officiating at the proceeding, showing the day and date on which said assessment roll was reviewed. For appearing with said roll as required herein the assessing officer shall receive the same per diem as is received by him while in attendance at the meeting of the county board of equalization. His claim shall be presented to and paid by the proper officer of the political subdivision, or municipality, of which he is the assessing officer, in the manner as his other compensation is paid. The action of the commission, or member or agent thereof, when done as provided in this section, shall be final, when approved by the state board of equalization. When any property has been reviewed, assessed and valued by the commission as herein authorized, such property shall not be assessed or valued at a lower figure by the local assessing or equalizing officer for the year the assessment is made."

In the case of State ex rel. v. Jones, 41 S. W. (2d) 393, the action of the State Tax Commission in adding omitted personal property to the assessment rolls, purportedly under the authority conferred upon such commission by the above statute (then Section 9855, R. S. Mo. 1929), was under attack. The Supreme Court upheld the action of the State Tax Commission with respect to the addition of such omitted property and quoted with approval the following portion of the decision in Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 323 Mo. 180, 19 S. W. (2d) 746:

"The state tax commission is given general supervision over all the assessing officers of the state, with power to enforce its orders; it has all the powers of original assessment; it may receive complaints as to property liable to taxation that has not been assessed, or that has been fraudulently or

improperly assessed, and apply the proper corrective measures; it can raise or lower the assessed valuation of real or personal property either in specific instances or by class; and it has authority, on the complaint of any taxpayer and after the various assessment rolls have been passed upon by the several boards of equalization, but before the delivery of the tax rolls to the proper officers for collection, to hold hearings for the purpose of determining whether any property subject to taxation has been omitted from the assessment rolls and whether any property thereon has been improperly valued, and to make such changes with respect thereto as shall be necessary to make the assessment rolls conform to the facts as found by them.

"It is no doubt true that the state tax commission was not intended to supplant local assessing officers and boards, but very clearly it is given full and adequate power, not only to supervise, but to review, their work, and where it finds assessments which were not made conformably to law to revise them--and this by inserting where necessary, after a hearing, its own valuations in lieu of those made by the local authorities. It is also true that its revision of the assessments as made by county assessors and boards, in so far as it affects the equalization of the values of property among the respective counties of the state, whether such revision be made before or after the state board has acted, is subject to the approval of that board. And in this connection it should be said that, even though the action of the state board of equalization in the first instance completes the assessment judgment, that fact does not preclude a revision of such judgment by the tax commission, subject to the board's final approval. The technicalities relating to judgments of courts are without application."

From the foregoing, we believe that omitted personal property may be added to the assessment rolls either by the county

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board of equalization prior to its final adjournment, or by the State Tax Commission, acting in accordance with the provisions of Section 11028, quoted above.

A different situation presents itself with respect to the addition of omitted real property. Supplementing action that might be taken by the county board of equalization under Section 11006, quoted supra, there appears Section 10977, R. S. Mo. 1939, authorizing other action that can be taken by the assessor. We quote said section, in part:

"If the assessor discovers any real property, presumed to be subject to taxation, which has not been returned to him by the clerk, he shall assess such property and enter the same on the assessment list.
* * * "

This section has been construed to authorize the addition of omitted real property whenever discovered. We quote from State ex rel. v. Carr, 178 Mo. 329, l. c. 233:

" * * * If the assessor discovers other property of the taxpayer which he failed to list, or which was omitted from taxation, it is his duty to assess it, even if it is discovered years afterwards."

In addition to the methods outlined above, omitted real property could also be added by the State Tax Commission in accordance with the provisions of Section 11028, R. S. Mo. 1939, the provisions of which section have been more fully discussed hereinbefore.

We believe that under the unambiguous provisions of Section 10977, supra, it is the duty of the incumbent assessor to place omitted real property on the assessment rolls whenever such omission is discovered. We further believe that the failure of the assessor to take such action can be cured, if necessary, by action taken by the State Tax Commission, acting under the provisions of Section 11028.

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CONCLUSION

In the premises, we are of the opinion:

(1) That assessment of omitted personal property may be made by the county board of equalization after delivery of the assessment rolls by the assessor to the county clerk, subject to the limitation that property so added may be only that which has been omitted from the assessment rolls then under consideration by such board;

(2) That absent action by the county board of equalization, such omitted personal property may still be added by the State Tax Commission, as provided in Section 11028, R. S. Mo. 1939;

(3) That assessment of omitted real property may be made either by the county board of equalization when lawfully in session, subject to the limitation mentioned in paragraph (1) above, or by the State Tax Commission, in accordance with the provisions of Section 11028, or by the county assessor at any time when knowledge of such omission shall come to him;

(4) That omitted real property may be added to the assessment rolls by the person filling the office of county assessor at the time such omission is discovered.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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