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## TAXATION IN MISSOURI\*

BUELL F. WEATHERS\*\*

### I. SUBJECTS AND INCIDENCE OF TAXATION

#### A. *Inheritance Taxes*

*Old Folks Home of St. Louis County v. St. Louis Union Trust Co.*<sup>1</sup> illustrates the advisability of clearly expressing one's intention as to the incidence or burden of the Missouri inheritance tax and any shifting thereof to someone other than the recipient of the property. Failure to express such intention in clear, direct language may result in a dispute and require litigation to ascertain such intention from a construction of the instrument in question as a whole. The setting aside of a reserve for taxes as a part of a plan by which the deceased sought to insure immediate and full payment to her preresiduary beneficiaries was believed by the court to signify an implied intention to exonerate the preresiduary beneficiaries from the payment of inheritance taxes and to shift the burden thereof to the residuary estate. However, the court could not find any intention to shift all or any part of the inheritance tax burden of one residuary beneficiary to the other residuary beneficiary which was, by statute, exempt from inheritance tax liability. While the residuary estate was to be "divided in equal shares," it was held that such division was to be made before rather than after payment of the inheritance tax due by reason of the residuary gifts.

#### B. *Sales Tax*

*Hern v. Carpenter*<sup>2</sup> held that all sales of gasoline are exempt from liability for sales tax. The state cannot collect sales tax even on those sales where the gasoline is actually used for purposes other than operating motor vehicles on state highways and the purchaser thereby becomes entitled to and does, in fact, obtain a refund of the excise tax paid at the time of purchase.

#### C. *Taxation of Railroads*

By statute,<sup>3</sup> only that portion of the total value of a railroad's rolling

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\*This Article contains a discussion of selected 1958 and 1959 Missouri court decisions.

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1. 313 S.W.2d 671 (Mo. 1958).

2. 312 S.W.2d 823 (Mo. 1958).

3. § 151.060, RSMo 1949.

stock is taxable in Missouri as the ratio of the number of miles of such road in Missouri bears to the total length of road owned or controlled by the railroad in all states. Such formula does not require track ownership or exclusive control by lease or otherwise. On the contrary, railroad track used pursuant to so-called "trackage right" agreements, providing for joint use of such railroad track with the owner thereof, must be included if the railroad has sufficient control of such track to operate thereon its rolling stock on a regular, habitual and continuous basis as a part of its interstate system.<sup>4</sup>

#### D. *Employment Security Tax*

For an employer to be entitled to a reduced contribution experience rating under the Missouri Employment Security Law,<sup>5</sup> he must not only have been subject to contribution liability for thirty-six consecutive calendar months immediately preceding the calculation date for the next calendar year but must have been chargeable for such period with benefits paid under the law. Thus, in *Anderson Air Activities, Inc. v. Division of Employment Security*,<sup>6</sup> plaintiff first became subject to the law in June, 1951, and had paid contributions for thirty-six months by July 1, 1954 (the calculation date for calendar year 1955), but was still not entitled to an experience rating because its account did not become chargeable with benefits until the first calendar quarter of 1952.

## II. PROPERTY EXEMPT FROM TAXATION

In *Schmoll v. Housing Authority of St. Louis County*,<sup>7</sup> the court recognized that previous decisions<sup>8</sup> had held that property subject to the Housing Authorities Law<sup>9</sup> is exempt from ad valorem taxes. It was also noted that a contractual provision for annual payments in lieu of taxes had previously been held valid.<sup>10</sup>

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4. *St. Louis Southwestern Ry. v. State Tax Comm'n*, 319 S.W.2d 559 (Mo. 1959).

5. §§ 288.010-.460, RSMo 1949, as amended.

6. 321 S.W.2d 710 (Mo. 1959).

7. 321 S.W.2d 494 (Mo. 1959).

8. *Bader Realty & Inv. Co. v. St. Louis Housing Authority*, 358 Mo. 747, 217 S.W.2d 489 (1949) (en banc); *Laret Inv. Co. v. Dickmann*, 345 Mo. 449, 134 S.W.2d 65 (1939) (en banc).

9. §§ 99.010-.230, RSMo 1949, as amended.

10. *St. Louis Housing Authority v. St. Louis*, 361 Mo. 1170, 239 S.W.2d 289 (1951) (en banc).

## III. ASSESSMENT OF TAXES

In *May Dep't Stores Co. v. State Tax Comm'n*,<sup>11</sup> the Commission had issued an order for the purpose of equalizing land values among several counties, including St. Louis County. Thereafter, the St. Louis County Board of Equalization ordered a re-assessment of a commercially zoned area in which plaintiff's property was located. The re-assessment resulted in the valuation of plaintiff's property being increased even more than was required by the Commission's order. Plaintiff appealed from the assessed value of its property under the County Board's re-assessment order and sought to avoid any increase at all by contending that the orders of the Commission and the County Board were void as being discriminatory and unconstitutional.

Although a contemplated re-assessment of all property in the county would probably take two or three years to complete, the County Board's order was upheld as a step toward attaining uniformity in the county assessments at a time when a complete revaluation was immediately impossible. The court held that under its authority and duty to raise the valuations of any and all tracts deemed by it to be returned at less than their real value, the County Board not only could raise the valuations of designated specific tracts within an area but could single out an entire area to be increased. There was evidence that the entire area in question had increased in value to a far greater extent than any other commercial area. Plaintiff also failed to show the actual value of its land and other in the same class or the value of other property in the county generally. There was, therefore, no basis for a finding of discrimination or violation of either the state constitutional requirement of uniformity in the taxation of a class of property or the equal protection provisions of the federal constitution.

In regard to the Commission's order, the court pointed out that there is no statutory provision for an appeal from orders and judgments of the Commission and that an order such as the one in question, if not directly attacked, constitutes a final judgment and can neither be attacked collaterally nor subjected to review in a taxpayer's appeal from a specific valuation by a county board. Since plaintiff's action was not a direct attack on the Commission's order but an appeal from the County Board's

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11. 308 S.W.2d 748 (Mo. 1958).

re-assessment, the validity of the Commission's order was not a proper matter for consideration.

In *Foster Bros. Mfg. Co. v. State Tax Comm'n*,<sup>12</sup> it was pointed out that boards of equalization have original jurisdiction of intracounty equalization<sup>13</sup> and that the State Tax Commission has exclusive jurisdiction of intercounty equalization.<sup>14</sup> Plaintiffs conceded that their land was assessed at less than its true value and on a basis which was equal and comparable with all other real estate in the City of St. Louis. Having thereby admitted that the Board of Equalization had fully performed its duty of intracity equalization, plaintiffs were held not entitled to any relief in an appeal from the action of the Board of Equalization refusing to reduce the valuations placed on plaintiffs' land. Plaintiffs' contention that their property had been assessed at a higher percentage of its true value than other property of the same class situated in other counties throughout the state could only be made in a direct attack on an order of intercounty equalization issued by the Commission.

A direct attack by a taxpayer upon the validity of an intercounty equalization order issued by the State Tax Commission resulted in the prohibition action of *State ex rel. State Tax Comm'n v. Walsh*.<sup>15</sup> The taxpayer directly attacked the equalization order in the Circuit Court of the City of St. Louis under section 536.105, Missouri Revised Statutes (1949).<sup>16</sup> The commission then sought to prohibit the circuit judge from exercising jurisdiction over it and was successful on the ground that the action by the taxpayer was governed by the process and venue requirements<sup>17</sup> of the Civil Code rather than the Administrative Procedure and Review Act.<sup>18</sup> Venue of actions for judicial review of non-contested administrative decisions was held to be in Cole County.

In *Taney County v. Empire Dist. Elec. Co.*,<sup>19</sup> the court concluded that it need not actually determine whether the State Tax Commission, when

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12. 319 S.W.2d 590 (Mo. 1958).

13. § 138.150, RSMo 1949.

14. § 138.390, RSMo 1949.

15. 315 S.W.2d 830 (Mo. 1958) (en banc).

16. In *May Dep't Stores Co. v. State Tax Comm'n*, *supra* note 11, it was indicated that this statute was not applicable to an intercounty equalization order.

17. §§ 506.110, 508.010, RSMo 1949.

18. §§ 536.010-.140, RSMo 1949, as amended.

19. 309 S.W.2d 610 (Mo. 1958).

reviewing an assessment, was required by statute<sup>20</sup> to make its order at the very time and place of the hearing. Even assuming that the statute so required, the provision was held directory only and not mandatory. Therefore, such an order is not invalid because entered after the date of the hearing. If the order is made after October 31 (by which date section 137.290, Missouri Revised Statutes (1949), specifies that the county clerk shall have delivered the tax books to the county collector), the court indicated that the county clerk should prepare a supplemental tax book in accordance with the order and deliver it to the county collector.

In *Koplar v. State Tax Comm'n*,<sup>21</sup> the circuit court was held to have exceeded its jurisdiction in determining the value of certain properties, fixing the assessment that should be placed upon each particular tract, and ordering the Commission to modify its decisions accordingly. A circuit court is forbidden by statute<sup>22</sup> to substitute its discretion for discretion legally vested in the Commission.

#### IV. COLLECTION OF TAXES

Even though an appeal is pending in a statutory proceeding instituted by a taxpayer to contest an assessment, such taxpayer must, nevertheless, pursue the same statutory remedy to contest an identical assessment made the next year. The taxpayer cannot, on the ground of preventing a multiplicity of suits, resort to a court of equity to stay collection of the contested portion of the taxes for the second and subsequent years, pending the final determination of the appeal contesting the first year's assessment.<sup>23</sup> That there might be a different result under certain circumstances is indicated by the court's comment that it was not the plaintiff's theory that the taxing officials had exceeded their jurisdiction or powers, that the property was immune or exempt from taxation, or that the assessment was made vexatiously.

In a summary proceeding against an ex-officio collector of a county under township organization, the state was permitted to recover fees and commissions retained in excess of those allowed by law although the statutory penalty was not assessed.<sup>24</sup>

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20. § 138.470, RSMo 1949, provides, in part, that the Commission "shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice. . . ."

21. 321 S.W.2d 686 (Mo. 1959).

22. § 536.140(5), RSMo 1949, as amended.

23. *Cupples-Hesse Corp. v. Bannister*, 322 S.W.2d 817 (Mo. 1959).

24. *State v. Ludwig*, 322 S.W.2d 841 (Mo. 1959) (en banc).

## V. TAX SALES AND TITLES

In *Klorner v. Nunn*,<sup>25</sup> a collector's tax deed was held void on its face because it was not witnessed by the county clerk as expressly required by statute.<sup>26</sup> Therefore, section 140.590, Missouri Revised Statutes (1949), the three year limitation statute against attack on a collector's tax deed, was never set in motion and did not bar plaintiffs' action to set aside the tax deed.

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25. 318 S.W.2d 241 (Mo. 1958).

26. Mo. Laws 1933, at 438, § 9957a, as amended, § 140.460, RSMo 1949.