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Taxation in Missouri-1957

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TAXATION IN MISSOURI–1957*

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The decisions of the Supreme Court of Missouri during 1957 in the field of taxation and related subjects, while not numerous, included one of first impression and others of general interest.

I. SUBJECT AND INCIDENCE OF TAXATION

A. *Real Estate Taxes*

In *State ex rel. Benson v. Personnel Housing, Inc.*,[1] the defendant corporation had leased certain land owned by the United States and had constructed housing units on the leased premises for rental to military and civilian personnel of the army. The lease originally provided that title to all improvements should remain in the lessee during the term of the lease, but defendant entered into a modification of the lease so as to provide that the improvements were real estate and property of the United States, apparently having sought thereby to insure its contentions that its interest in the property was immune from taxation by reason of title being vested in the United States Government and also that there was no statutory authority to assess its leasehold interest in the property. Pointing out that the enjoyment of the entire worth of the buildings and improvements would be had by defendant as the lease was for seventy-five years while the buildings and improvements only had an estimated useful life of thirty-five years, the court held that defendant's interest in the property was not immune from but subject to taxation both before and after the lease was changed. Defendant's interest in the property was held to be classified as real estate for the purposes of taxation by section 137.010 (2), Missouri Revised Statutes (1949), and the assessment of such interest as real estate was a legal assessment and not void as contended by defendant.

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*This Article contains a discussion of selected 1957 Missouri court decisions.

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1. 300 S.W.2d 506 (Mo. 1957).

B. *Inheritance Taxes*

A case of first impression was that of *In Re Gerling's Estate*,[2] in which the supreme court noted that the present inheritance tax act[3] as amended, although in effect for forty years, had never been construed by it with reference to joint tenancies. Exceptions had been taken to an inheritance tax appraiser's report which included certain real and personal property held at the time of decedent's death by said decendent and her brother as joint tenants with the right of survivorship. Noting the familiar doctrine that tax laws are to be strictly construed and stressing the well-established doctrine that the right of survivorship does not pass anything from a deceased joint tenant to a surviving joint tenant who takes rather by virtue of the conveyance by which the joint tenancy was created, the court held that property held in joint tenancy is not subject to state inheritance tax upon the death of one of the joint tenants.

In re Atkins' Estate[4] held that the rights given by the new probate code[5] to a surviving spouse, upon election to take against the will, to receive by descent one-half of the estate if the testator leaves no lineal descendants or one-third of the estate if the testator leaves lineal descendants,[6] were marital rights and that one-third of the net estate of a testator survived by a widow and three children was properly deducted as a marital right in determining the clear market value of the property transferred by will to the widow and subject to state inheritance tax. However, it is no longer necessary to rely upon the case to reach such a result because, as noted in the opinion, the sixty-ninth general assembly, even before the opinion was handed down, clarified the situation by amending the inheritance tax exemption statute[7] so as to permit expressly such deducation without reference to whether or not it was a marital right.

C. *Excise Taxes*

Applying a well settled rule that one voluntarily proceeding under a statute or ordinance and accepting its benefits cannot later question its validity in order to avoid its burdens, the court held in *St. Louis Public*

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2. 303 S.W.2d 915 (Mo. 1957), 23 Mo. L. REV. 240 (1958).
3. §§ 145.010-.350, RSMo 1949, as amended.
4. 307 S.W.2d 420 (Mo. 1957).
5. Mo. Laws 1955, at 385-496, §§ 1-355, codified as cc. 472-75 and §§ 481.070, .130, 483.480, .582, RSMo 1957 Supp.
6. Mo. Laws 1955, at 465, § 252, codified as § 474.160, RSMo 1957 Supp.
7. § 145.090(3), RSMo 1957 Supp.

Serv. Co. v. City of St. Louis[8] that a bus company was estopped from attacking the validity of an ordinance in an effort to avoid an occupation tax of five per cent of gross receipts imposed by that ordinance where, for many years, the bus company had periodically applied for and received valuable permits under the ordinance for operation of its buses. Going beyond the scope of the majority opinion, Judge Hyde, dissenting, concluded that section 301.340, Missouri Revised Statutes (1949), is not mandatory and does not require that any occupation tax imposed on the business of transporting passengers be measured only by the number of vehicles engaged in such transportation.

II. Assessment of General Property Taxes

In *Hellman v. St. Louis County*,[9] contracts were entered into between St. Louis County, a county of the first class operating under a home rule charter and two appraisal companies for the appraisal of certain realty in the county in connection with the ultimate assessment of such realty for taxation purposes. The contracts provided for the appraisal in 1956 of property in only one-third of the county and granted the county options in 1957 and 1958 for similar services as to the remainder of the property in the county. The contracts were not invalid as an improper delegation of powers enjoined by law solely upon the assessor nor were they invalid on the ground that they constituted an unlawful appraisal and assessment of real property pursuant to a three year plan in violation of statutes requiring all real property in St. Louis County to be assessed at its true value each year. The contracts did not contemplate the relinquishment by the assessor of his duties to the appraisal companies and did not contemplate or direct that the assessor should not assess all of the taxable property of the county at its true value each year to the best of his ability but, on the contrary, merely contemplated that he should have the benefit of an expertly appraised valuation of certain land within the county in making the assessment of 1957 and that the county might furnish him with such assistance as to other real property in the county in either or both of the ensuing years.

III. Tax Sales and Titles

Section 140.590, Missouri Revised Statutes (1949), the three-year

8. 302 S.W.2d 875 (Mo. 1957) (en banc).
9. 302 S.W.2d 911 (Mo. 1957).

limitation statute against attack on a collector's tax deed, continued to receive attention[10] in *Gilliam v. Gohn.*[11] In an effort to escape the application of the statute, plaintiffs contended that defendant, being in possession of the property as a cotenant, was under a duty to pay taxes thereon but fraudulently procured her father-in-law to purchase the property at a tax sale, that such purchase was in fact a purchase by defendant for herself and amounted to a payment of the taxes by defendant for the benefit of all the cotenants, and that such payment fell within the exception "where the taxes have been paid"[12] as contained in the statute. After gravely questioning whether a cotenant in possession of property is under a duty to pay the taxes thereon, the court held that the payment referred to in the statute as an exception thereto was a payment of the taxes to the governmental body involved prior to the sale and was not meant to include a "payment" such as the one claimed by plaintiffs to have occurred as a result of the tax sale. After noting that the statute is a special statute of limitations not containing any exception for fraud, the court, by way of dictum, stated that the running of a special statute of limitations cannot be tolled for any reason not provided in the statute itself, thereby implying that the suit would have been barred even if the petition had stated a valid cause of action based on fraud. As for plaintiffs' contention that the statute was inapplicable because the tax deed was void on its face for inadequate consideration, the court held that the tax deed, which recited a consideration of $109.96 but said nothing concerning improvements or the value of the lot, was not void on its face for inadequate consideration so as to prevent the operation of the limitation provided in the statute and, again by way of dictum, suggested the general applicability of the statute in cases of supposed or constructive fraud for inadequacy of consideration.

In *Johnson v. Stull,*[13] a collector's deed conveying a lot worth at least $1200.00 as indicated by the evidence and sold for $81.64 was canceled on the ground of fraud because the consideration was so grossly

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10. See Eckhardt, *Work of Missouri Supreme Court for 1951—Property,* 17 Mo. L. REV. 398, 401-02 (1952); Eastin, *Work of Missouri Supreme Court for 1951—Taxation,* 17 Mo. L. REV. 409, 410-11 (1952); Eastin, *Work of Missouri Supreme Court for 1952—Taxation,* 18 Mo. L. REV. 382, 385 (1953); Eckhardt, *Work of Missouri Supreme Court for 1953—Property,* 19 Mo. L. REV. 335, 339-41 (1954); Comment, 20 Mo. L. REV. 87-98 (1955), and cases discussed therein.

11. 303 S.W.2d 101 (Mo. 1957).

12. *Id.* at 107.

13. 303 S.W.2d 110 (Mo. 1957).

inadequate as to shock the conscience, and purchasers from the tax sale purchaser were held not to be bona fide purchasers inasmuch as they had constructive notice of everything the instruments on file, including the collector's deed, showed with respect to the tax sale purchaser's chain of title and, therefore, were held to know that the lot "had been sold for a consideration so grossly inadequate as to, in law, amount to fraud and to call for the cancellation of"[14] the collector's deed.

IV. MISCELLANEOUS

Where the evidence failed to show that any money received by a county by reason of the collection of taxes levied for road and bridge purposes by the county court against property located in a previously disorganized special road district was not expended by the county for the use and benefit of roads and bridges located in the former special road district, a corporation which had supplied labor and materials to such former road district for the maintenance and repair of its roads could not recover from the county for such labor and materials on the theory that the county was unjustly enriched by the receipt of money which in equity and in good conscience belonged to the corporation.[15]

State ex rel. Missouri Water Co. v. Public Serv. Comm'n[16] is not a tax case but involves the closely related question of the rate of return to which a public utility company is entitled. Determination of such rate of return on the basis of the formula of original cost less depreciation and without giving any consideration whatever to evidence relating to the present "fair value" of the company's property was declared improper. The opinion is lengthy but worthy of note inasmuch as it is the first such opinion on the subject by the supreme court in several years.

14. *Id.* at 119.
15. Midwest Precote Co. v. Clay County, 303 S.W.2d 90 (Mo. 1957).
16. 308 S.W.2d 704 (Mo. 1957).