

1960

Taxation in Missouri

Buell F. Weathers

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Buell F. Weathers, *Taxation in Missouri*, 25 Mo. L. REV. (1960)

Available at: <https://scholarship.law.missouri.edu/mlr/vol25/iss4/5>

This Article is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

TAXATION IN MISSOURI*

BUELL F. WEATHERS**

I. SUBJECTS AND INCIDENCE OF TAXATION

A. *Inheritance Taxes*

*In re Hutchins' Estate*¹ determined the inheritance tax liability resulting from a voluntary irrevocable trust indenture which was executed in 1930 and provided that the trust income should be paid to the grantor for life and that on her death certain portions of the corpus should be paid to named beneficiaries and other portions should be continued in trust with the income from such reduced corpus to be paid to other named beneficiaries. After the grantor's death in 1953, the beneficiaries of the trust were held to have taken in "enjoyment" at or after the death of the grantor, who was held to have retained the enjoyment of her property for and during her life. Therefore, the trust assets were held subject to inheritance tax under applicable Section 570, Missouri Revised Statutes (1929), imposing such tax on transfers intended to take effect in possession or enjoyment at or after the death of the transferor.

B. *Sales or Use Tax*

Where a parent corporation acquires motor vehicles through the merger of wholly owned subsidiary companies into the parent corporation, such acquisition does not constitute a transfer subject to sales or use tax.² The statute³ imposing a two per cent tax on the purchase price of vehicles purchased or acquired for use on Missouri highways implies, by the use of the words "purchase price," a sale or contract of exchange. When corporations merge, the transfer of property is by operation of law and not by contract of sale or exchange. Therefore, no purchase price is involved, and such transfer is not taxable.

*This Article contains a discussion of selected 1959 and 1960 Missouri court decisions.

**Attorney, Springfield, Missouri; A.B., University of Missouri, 1948, LL.B., 1950.

1. 323 S.W.2d 796 (Mo. 1959).

2. National Dairy Products Corp. v. Carpenter, 326 S.W.2d 87 (Mo. 1959).

3. § 144.440, RSMo 1957 Supp.

C. License or Privilege Tax

In *State v. City of Springfield*,⁴ the city was held liable under Section 142.371, Missouri Revised Statutes (1949), for an excise tax of three cents per gallon on propane gas used in its buses. The city unsuccessfully contended that such tax was on the use of such special fuels as propane gas and, therefore, constituted a use tax which the legislature was prohibited by the constitution⁵ from imposing on the city. With three judges dissenting, the court en banc held that the tax is essentially a privilege or license tax imposed on the use of the highways rather than on the use of the fuel. Use of the fuel is important only in the sense that the number of gallons of propane used furnishes the standard for determining the amount of the tax due for highway use.

In *Transport Rentals, Inc. v. Carpenter*,⁶ motor vehicles operated within Missouri by a nonresident lessee having no right under the lease to purchase the vehicles were held to fall within the applicable Missouri reciprocity statutory provisions⁷ and did not have to be registered in Missouri if they were registered in the state of their owner's residence and that state granted like exemptions to motor vehicles registered under the laws of, and owned by residents of, Missouri. It was held immaterial whether such motor vehicles were registered in the state of which such operator was a resident or whether that state granted like exemptions to motor vehicles of Missouri residents. The owner, as defined by the Missouri reciprocity provisions, and not the operator as such must be considered as the person or corporation seeking reciprocity.

II. ASSESSMENT OF TAXES

Plaintiff's right to appeal to the State Tax Commission from his tax assessment was at issue in *Drey v. State Tax Comm'n.*⁸ The records of the county board of equalization were completely silent on the question of whether or not plaintiff had appealed to the county board from his assessment, and

4. 332 S.W.2d 942 (Mo. 1960) (en banc).

5. Mo. CONST. art. III, § 39 provides that "The general assembly shall not have power: . . . (10) To impose a use or sales tax upon the use, purchase or acquisition of property paid for out of the funds of any county or other political subdivision."

6. 325 S.W.2d 745 (Mo. 1959).

7. § 301.010(17, 19), RSMo 1957 Supp. and § 301.270, RSMo 1949.

8. 323 S.W.2d 719 (Mo. 1959).

such records did not in any way reflect any consideration by the board of plaintiff's assessment. The county clerk, as secretary of the county board of equalization, is required by statute⁹ to keep an accurate record of the proceedings and orders of the board as to every assessment considered whether or not any change is made therein, but the absence of an affirmative showing by the records of the county board that plaintiff had appealed to it is not conclusive and does not alone preclude plaintiff from appealing to the Commission. A formal petition is not necessary to perfect an appeal to the county boards of equalization; rather it is sufficient if taxpayers make it known to such boards either in person, by attorney or agent, or in writing, that they are objecting to or protesting their assessments.¹⁰ Evidence that the county board knew plaintiff was objecting to his assessment, that plaintiff's attorney appeared before the board and discussed the assessment with it, and that the board members then discussed the assessment and voted on the question of changing it, was sufficient to constitute an appeal by plaintiff to the county board so as to require the Commission to accept jurisdiction of plaintiff's appeal to it.

In *State ex rel. Wilson Chevrolet, Inc. v. Wilson*,¹¹ the proceedings of the county board of equalization increasing relators' merchants-tax valuation were held void. Such boards are created by statute and have only such limited jurisdiction and powers as are committed to them by statute. They speak only through their records which must affirmatively show facts vesting them with jurisdiction, or their actions and decisions must be held void. Notice of the valuation increase being required by statute,¹² proof of such notice was a jurisdictional fact which must affirmatively appear of record. A copy of a letter addressed to relators was insufficient to show the giving of the required notice in the absence of proof by affidavit, certificate or recital somewhere in the board's proceedings that the original letter was duly and timely mailed. Neither could the giving of notice be proved by parol evidence extrinsic to the board's record. Section 536.105, Missouri Revised Statutes (Supp. 1957), relied on by the board, is applicable to non-contested cases which are not subject to administrative review but is not applicable to decisions of county boards of equalization from which there is a right of appeal to the State Tax Commission. Furthermore, the

9. § 138.060, RSMo 1949.

10. Mo. Laws 1945, at 1782, as amended, § 137.275, RSMo 1949.

11. 332 S.W.2d 867 (Mo. 1960).

12. § 150.060, RSMo 1957 Supp.

court indicated that even in those cases where such statute is applicable, the board may not use extrinsic evidence to establish a jurisdictional fact required to be shown by the record but not appearing therein.

III. TAX SALES AND TITLES

Section 140.590, Missouri Revised Statutes (1949), contains a special three-year statute of limitations against attack on a collector's tax deed. However, there has been imposed on such statute a judicial exception that tax deeds void on their face do not start the statute running. Such judicial exception was applied in *Pettus v. City of St. Louis*¹³ in which the defendant city had paid \$4.75 for each of twenty parcels of land sold by the city collector at a tax sale. While the deeds did not disclose the nature of the parcels, their physical characteristics and surroundings, or whether they were improved or not, they did disclose the size of the parcels and certain ones were so described as to disclose their frontage and depth. The parcels comprised six assembled tracts of land totaling forty-eight acres in one locality of the city, and the total consideration paid by the city was \$95.00. More than three years after the tax deeds were recorded, plaintiffs brought suit to quiet title, alleging that the deeds were void upon their face because the consideration was so inadequate as to shock the court's conscience. Noting that *Costello v. City of St. Louis*¹⁴ was the first and only decision applying the void-on-its-face doctrine to consideration, the court compared what it described as the controlling elements (quantity of land, front footage, sale price per front foot, square footage, and sale price per square foot) in the instant case and the *Costello* case. Concluding from such comparison that the instant case was much more aggravated than the *Costello* case, the court held the collector's tax deeds void on their face and, therefore, insufficient to set the special statute of limitations in motion.

The court, however, may have invited an effort to bring about a reconsideration of the holding in the *Costello* case. Pointing out that defendant city merely sought to distinguish the *Costello* case and did not contend that its holding was wrong or should be overruled, the court commented that it would be time enough to examine that question if and when it was raised and briefed but that the case should be adhered to under the circumstances presented.

13. 328 S.W.2d 636 (Mo. 1959).

14. 262 S.W.2d 591 (Mo. 1953).

The court also posed the possibility that a tax sale to a governmental unit to which taxes are due constitutes an extinguishment of such taxes and thereby furnishes consideration for the sale which should be considered in addition to the bid price on the issue of inadequacy of consideration. Such issue not being raised, the court did not choose to consider it further.

The defendant city also claimed title to certain portions of the property by virtue of two sheriff's deeds made pursuant to a sale under special execution for benefits assessed against such portions in a condemnation proceeding. The sheriff's deeds were held invalid for inadequacy of consideration so gross as in itself to constitute fraud. Not being restricted to the face of the sheriff's deeds since no question of limitations was raised as to those deeds, the court found from the evidence that the consideration in each of the sheriff's deeds was only about two per cent of the true value of the land.

In *Evans v. Brussel*,¹⁵ the superiority of a general real estate tax lien as against a lien of special taxes for improvements was upheld. Plaintiff had purchased certain property at a sheriff's sale held pursuant to a special execution issued upon a benefit judgment previously entered in a condemnation suit. At that time, general taxes assessed against the property in the names of the former owners were delinquent. The property was thereafter sold for delinquent taxes by the collector to defendant City of St. Louis. The sheriff's deed to plaintiff did not wipe out the then existing general taxes. Whatever title plaintiff acquired was subject to, and lost by the foreclosure of, the lien for general taxes.

IV. USE OF FUNDS RAISED BY TAXATION

School crossing guards employed by the Board of Police Commissioners of St. Louis to escort children safely across streets were engaged in either a police function or a purely local function. If they were engaged in a police function, they were improperly employed because they increased the police force above the strength authorized by the St. Louis Police Act.¹⁶ However, if they were engaged in a local function, the State cannot tax for the performance of local functions,¹⁷ and its agency, the Police Board, cannot use

15. 330 S.W.2d 788 (Mo. 1959).

16. §§ 84.010-340, RSMo 1949 and §§ 84.100-265 1957 Supp.

17. Mo. CONST. art. X, § 10(a).

tax funds for such functions. In either case, the city of St. Louis could not be required to pay the salaries of such guards.¹⁸

V. MISCELLANEOUS

The St. Louis Police Act¹⁹ is not unconstitutional as a delegation of the legislative power to tax without appropriate guidance or standards. Such statutes contain sufficient limitations and standards governing the exercise of the police board's discretion in matters of administrative detail that the powers conferred are within the permissible limits of delegated discretion.²⁰

18. *State ex rel. Priest v. Gunn*, 326 S.W.2d 314 (Mo. 1959) (en banc).

19. See statutes cited note 16 *supra*.

20. *State ex rel. Priest v. Gunn*, *supra* note 18.