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## THE FISCAL OR TAX YEAR IN MISSOURI.

In 1892 the St. Louis Court of Appeals decided<sup>1</sup> that the phrase "taxable year of 1890" meant the year beginning on June 1, 1889, and ending May 31, 1890. The question arose upon a supplemental agreement to a lease of land for a term beginning May 15, 1890, whereby the parties agreed that "the entire tax for the year 1890, shall be paid by the lessor and lessees in the proportion that each of said parties has had possession of said premises during the taxable year of 1890, it being taken that the lessees have had possession . . . since the fifteenth day of May 1890." The lessor contended that the phrase "taxable year of 1890" should be construed to mean the calendar year of 1890, which would make the lessees liable for 15/24 of the taxes; while the lessees contended that the phrase meant a fiscal or taxable year ending on June 1, 1890, so that they were liable for only 1/24 of the taxes. The Court sustained the contention of the lessees, holding that sections 7552 and 7569 of the Rev. Statutes of Missouri of 1889 clearly establish what may be designated as a taxable or fiscal year, beginning on the first day of June in each year, and that the Supreme Court had recognized that fact in several early cases.<sup>2</sup>

Only two years before that decision, the same court, composed of the same judges, had occasion to construe a statute which provided that no person should be eligible for the office of director of public schools "who shall have not paid a tax within said city for two consecutive years immediately preceeding his election;" and it held that "when reference is made to taxes for two consecutive years immediately preceding an election, the term has reference to the *calendar* years preceding the year in which the election takes place."<sup>3</sup>

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1. De Giverville v. Legg, 48 Mo. App. 573.

2. Glasgow v. Rowse, 43 Mo. 479; McLaren v. Sheble, 45 Mo. 130.

3. State ex rel. v. Macklin, 41 Mo. App. 335.

It is apparent that these cases involved precisely the same question notwithstanding in the De Giverville case the court attempted to justify its decision on the ground that, in the Macklin case, "it did not decide that for assessment purposes there could not be a taxable year." Probably the stronger reason for disregarding its decision in the Macklin case was that, in the meantime, the Supreme Court had decided<sup>4</sup> that the Court of Appeals had no jurisdiction in the Macklin case, wherefore the opinion and judgment in that case had no binding force.

The precise question decided in the DeGiverville case has not again come before any of the appellate courts, so that the decision in that case stands as the law of Missouri, unless it is in conflict with controlling decisions of the Supreme Court, although it seems palpably unsatisfactory and inconclusive, in view of the general scheme for the assessment and taxation of property established by our revenue acts, and, indeed, is demonstrably erroneous.

So far as it affects the construction of covenants providing for the payment of taxes, the question whether the rule laid down in the De Giverville case is right or otherwise is, perhaps, now of little consequence, inasmuch as parties making such covenants can and of course will so frame their covenants as to conform to that decision. But there is an important class of cases in which the interested parties cannot conform their actions and the circumstances to the rule there laid down, and hence are vitally interested in having the question rightly determined. Upon the termination of every life estate in real or personal property, the question arises whether the estate of the deceased life-tenant, or the remainder-man, is liable for accruing taxes, and the answer depends upon the correct determination of what the tax year really is.

It will be observed, too, that the rule announced in the DeGiverville case, if it be the law, offers a ready, though temporary, solution of the State's financial embarrassment, which the legislature may easily avail itself of, as the taxes under existing law are not collected until six months, and do not become delinquent until seven months, after expiration of the year for which the De Giverville case holds they are levied. In other words, as, at the time a year's taxes are received in the treasury, seven-twelfths of the next year's taxes have already accrued, by so amending the statutes relating to the collection of the revenue as to provide for its collection within the year for which it is levied, and changing the fiscal year to correspond to

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4. State ex rel. Macklin v. Rombaner, 104 Mo. 619.

such tax year, the state and county treasuries would be enriched in an amount equal to seven-twelfths of the total taxes for the year in which the change took place.

The decision in the De Giverville case was put upon the ground that Sections 7552 and 7569,<sup>5</sup> Revised Statutes Mo., 1889, "establish what may be designated as a taxable or fiscal year beginning on the first day of June in each year." The court quoted from two early decisions of the Supreme Court "only to show that the courts of the state have recognized that, for the purpose of assessment, there is such a thing as a taxable year, and that it is definitely fixed by statute."

While it may be conceded that the language quoted from the early Supreme Court opinions lends color to the conclusion reached by the Court of Appeals, the facts actually in judgment in those cases do not necessarily bear out that language. *Glasgow v. Rowes*<sup>6</sup> arose under an act imposing a tax on certain incomes, section three of which provided that the tax should be assessed upon the amount of salary or income received in the year next preceding the time of assessment of the tax. Under instructions from the auditor the assessment in question was made for the year from April 1, 1864, to March 31, 1865. The Court held that the auditor exceeded his authority in designating a year beginning on April first, inasmuch as the Legislature intended the tax year under said act to coincide with the tax year as established by the general revenue act then in force; but it did not expressly say what the tax year was. The court did, however, say that section 3 of the act under consideration "was in entire harmony with the then existing revenue law, which provided that the taxes collected for any year should be based on an assessment made for the previous year." This seems a clear recognition of the fact that under the general revenue law the assessment upon which

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5. Section 7552: Real Estate shall be assessed at the assessment which shall commence on the first day of June, 1881, and shall only be required to be assessed every two years thereafter. Each assessment of real estate so made shall be the basis of taxation on the same for two years next succeeding.

Section 7569: Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year.

These sections first appear in the act of March 30, 1872 (Laws of Mo., Adj. Session 1871, sec. 48, page 92, and sec. 60, page 95), where the date specified is August first. They were amended so as to read June first in 1881 (page 178 Laws of Mo. 1881), and have not since been amended except that in 1893 the former was so amended as to require the annual assessment of real estate. They are now sections 11371 and 11338, Rev. Stat. Mo. 1909.

6. *Glasgow v. Rowse*, 43 Mo. 479.

the property taxes were then based was made, or, to be exact, commenced in the year preceding that for which the tax was levied. As at that time the assessment of property began on the first Monday in September of each year,<sup>7</sup> the tax there under consideration should, under the theory of the De Giverville case, have been levied upon incomes which accrued from the first Monday in September, 1864, to the first Monday of September, 1865; but the above quotation from the court's opinion shows beyond question that the court did not so understand the law.

The question presented in McLaren v. Sheble,<sup>8</sup> the other case cited in the De Giverville opinion, was as to the liability of a grantor on his covenant of warranty made October 1, 1866, for taxes based upon an assessment which began on the first Monday of September, 1866, and it was ruled, upon the authority of Blossom v. Van Court,<sup>9</sup> that the taxes were a lien upon the land from the commencement of the assessment and, hence, the covenant had been breached. That disposed of the question presented for decision, but unfortunately the Court went on to say that the grantor "was liable for the taxes of the *fiscal year beginning at that date*" (first Monday of September, 1866). The statement that the fiscal year commenced on the first Monday of September was not justified by anything said or decided in Blossom vs. Van Court, and was in direct contravention of the statute, which had been in force for many years, defining the fiscal year as beginning on the first of October and ending on September thirtieth of each year.<sup>10</sup>

Even if it be assumed that the Court inadvertently used the term "fiscal year" to indicate the tax year, and that it intended to say that the tax year then began with the beginning of the assessment, on the first Monday of September, an examination of the several revenue acts in force from time to time, from 1855 on, shows beyond doubt that the court misconstrued the law in so holding, and that in 1866, as well as before and after that time, *the tax year corresponded with the calendar year*.

Under the Statutes of 1855, the assessment of property for purposes of taxation began on the first day of February in each year, and every person who owned or had charge of any taxable property on that day was required to deliver a list thereof to the assessor. The assessor returned the tax book, showing his valuation of property, to

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7. G. S. Mo. 1865, p. 100, Sec. 10.

8. McLaren v. Sheble, 45 Mo. 130.

9. Blossom v. Van Court, 34 Mo. 390.

10. G. S. Mo. 1865, p. 86, Sec. 11; 2 R. S. Mo. 1855, p. 1540, Sec. 2.

the County Court on or before July first each year, and at its next term that Court heard and determined all appeals from the assessor's valuations. When the assessments had been so corrected and the amount of the county tax stated therein, the County court caused the tax book to be delivered to the collector who at once proceeded to collect the taxes. The collector was required to make a list of taxes he was unable to collect, called the delinquent list, and post a copy thereof at the court house door at least ten days prior to the third Monday in December, and to return the delinquent list to the County Court on the third Monday in December, and to settle his accounts of all moneys received by him for taxes at the term of the County Court which commenced on the third Monday of December.<sup>11</sup>

Thus the proceedings were commenced and wholly concluded, including the collection of the tax, within eleven months of one calendar year; and it is obvious that the tax so collected was a tax for that calendar year in which the proceedings were had.

In 1857 a new revenue act was enacted under which the assessment still commenced on February first of each year, and the tax was levied, assessed and collected, or declared delinquent, prior to January first following.<sup>12</sup> Here again the tax was unquestionably levied for the calendar year in which the proceedings took place.

By act of March 27, 1861,<sup>13</sup> the assessment was made to begin on September first in each year, but the assessor did not return the tax book to the County Court until on or before the first day of February following, and that court heard appeals from the assessor's valuations on and after the third Monday in February. The county clerk was required, within ninety days after the correction and adjustment of the tax book, to make and deliver a copy thereof to the collector, who then proceeded to collect the tax; and he was required to post and return to the County Court at its term beginning on the third Monday in November, a delinquent list of taxes he could not collect.

Under this act the assessment began on September first in one year, and was completed and the tax levied and collected in the following year. Did the Legislature thereby intend to change the tax year from the Calendar year to a year beginning on September first and ending the following August thirty-first? If so, would they not have provided that taxes unpaid on August thirty-first were delin-

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11. 2 R. S. Mo. 1855, p. 1329, sec. 18; p. 1334, Sec. 49; p. 1335, Sec. 50; p. 1341, Sec. 20; p. 1345, Sec. 40, 41.

12. Laws Mo. 1857, p. 75 et seq.

13. Laws Mo. 1860, p. 1et et seq.

quent and subject to interest and penalties after *that* date? The fact that the tax did not become delinquent until the third Monday in November, nearly three months later, is in itself sufficient to show that no change in the tax year was intended. But that is not all.

The last section of the act<sup>14</sup> provides that it should take effect from and after August first, 1861, "provided, that its requirements shall not apply to the assessment and collection of the revenue for the year 1861, but the several officers having charge thereof shall proceed with and complete the same under the provisions of the laws in force at the date of the passage of this act." And under each of the acts mentioned, the tax levied was expressly declared an annual tax.<sup>15</sup>

So that in 1861 two assessments of property for taxation were commenced, one on February first, under the Act of 1857; the other on September first, under the Act of 1861. If, then, the tax year begins with the inception of the assessment, as was intimated in the McLaren case and decided in the De Giverville case, the result of the Act of 1861 was to subject property to two annual taxes during the period from February 1, 1861, to September 1, 1862—a result certainly not contemplated by the Legislature.

By an Act of the Adjourned Session of 1863,<sup>16</sup> the assessment began on the first Monday of September of each year, except in the County of St. Louis, where it began on the first day of September. The collector returned the delinquent list to the court on the third Monday of December in the following year. By express provision the tax levied was annual one. If the taxable year commences with the assessment, the curious anomaly was here presented of the tax year for the County of St. Louis differing from that of the rest of the State. This was, however, corrected in 1865 by requiring the assessment to begin everywhere on the first Monday in September.<sup>17</sup>

The act of March 18, 1870,<sup>18</sup> provided that "the assessment of real estate made for the year 1870 shall be the assessment thereof until the first Monday in July, 1871, between which last named time and the first day of October next thereafter, and in like time every two years thereafter, all real estate subject to taxation shall be assessed."

14. Laws Mo. 1860, p. 75, sec. 9.

15. 2 R. S. Mo. 1855, p. 1324, Sec. 5; Laws Mo. 1857, p. 76, Sec. 4; Laws Mo. 1860, p. 63, Sec. 6.

16. Laws Mo. Adj. Session 1863, p. 68, Sec. 7; p. 73, Sec. 51; p. 80, Sec. 38; p. 66, Sec. 4.

17. G. S. Mo. 1865, p. 100, Sec. 10.

18. Laws Mo. 1870, p. 114, Sec. 1.

By the Act of March 30, 1872,<sup>19</sup> the assessor was required to list all taxable property between the first days of August and January, and to return his assessment to the County Court on or before January twentieth each year. The County Board of Equalization met on the first Monday of April to correct the assessor's valuations and to hear appeals therefrom. Unpaid taxes became delinquent on the following January first, i. e., the *second* January first after the beginning of the assessment. In this Act first appear those provisions upon which the decision in the De Giverville case is based, the only difference being that the dates specified here are the first day of August instead of first day of June.<sup>20</sup>

The Act of March 24, 1881,<sup>21</sup> provided that the assessment of property should begin on June first of each year, instead of August first, and the former date was also substituted for August first in those sections of the Act of 1872, which subsequently became sections 7552 and 7569 of the Revised Statutes of 1889. This Act of 1881 is still in force, and has not since been amended in any of its essential features, except that in 1893 it was provided that thereafter real estate should be assessed annually instead of biennially.

All of the aforesaid acts in express terms provided for the levy of an *annual* tax, and the State Constitution of 1875 prescribes the maximum *annual* rates that may be levied for county, school and municipal purposes.<sup>22</sup>

It is clear from the express terms of all the aforesaid acts providing for the assessment and levy of an annual tax only, that the Legislature, by advancing the date for the commencement of the assessment of property in the Acts of 1861, 1872 and 1881, did not intend to shift the tax year so as to make it begin with the assessment, since the result would have been to levy something other than an annual tax in those years. What, then, was the object of so advancing from time to time the date on which the assessment should begin? The answer is apparent: it was for the purpose of giving the assessors and county courts or boards of equalization more time in which to make and correct and adjust the assessment. The fact that successive changes were made, and at long intervals of time during which the State was being rapidly settled, indicates that as the reason for the changes. As to the final change in 1881, that must be true, inas-

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19. Laws Mo. Adj. Session 1871, p. 89, Sec. 28; p. 95, Sec. 62; p. 87, Sec. 14; p. 95, Sec. 63; p. 106, Sec. 116.

20. *Ib.* p. 92, Sec. 48; p. 95, Sec. 60.

21. Laws Mo. 1881, p. 178.

22. Const. Mo. 1875, Art X, Sec. 11.

much as the Legislature, because of the constitutional provision adopted in 1875, at that time had no power to levy the prescribed annual rates for a shorter period than a year. That constitutional limitation would necessarily prevent such an interpretation of the sections of the Act of 1881 relied upon by the court in the DeGiverville case, as was there given them. Conceding that prior to 1875 the Legislature had power, by shifting the tax year, to assess and levy taxes for shorter periods than a year, did it exercise that power by the Act of 1872, in which appear for the first time the provisions relied upon in the De Giverville case? Even if it were true that the Legislature by that act did so intend, and the act be construed so as to effectuate that intent, still the decision in the De Giverville case was wrong, and the tax year in Missouri remains as established by the Act of 1872, i. e., as beginning on August first and ending on July thirty-first, because the legislature had no power in 1881 to levy a tax for a shorter period than a year, either by shifting the tax year, or by any other means.

As before stated, the fact that the tax levied under the Act of 1872 was in express terms an annual tax, and not a tax for a fraction of a year, clearly negatives any intention on the part of the Legislature to shift the tax year by the provision requiring the assessment to be commenced on August first. Hence the tax year must be held to have remained as it was before that act, unless the provisions thereof which afterwards became sections 7552 and 7569 of the Revised Statutes of 1889 must be construed as having shifted the tax year by force of their express terms. There is, however, nothing in the language of those sections which necessitates a construction at variance with the intent to be gathered from the other provisions of the act. On the contrary, under the statutory rule that the word "year" is to be construed, in all statutes, to mean a *calendar* year, unless otherwise expressed in the statute to be construed,<sup>23</sup> those sections are in entire harmony with the other provisions of the act, and but emphasize what is already sufficiently clear, viz.: that no change in the tax year was contemplated. That rule requires those sections to be read thus: "Real Estate shall be assessed at the assessment which shall commence on the first day of August, 1872, (since 1881, first day of June, 1881.) . . . Each assessment of real estate so made shall be the basis of taxation on the same for two *calendar* years next succeeding." And "Every person owning or holding property on the first day of August (or by Act of 1881, first day of June) . . . shall be liable for taxes thereon for the ensuing

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23. G. S. Mo. 1865, p. 83, Sec. 6; 2 R. S. Mo. 1889, Sec. 6570; 2 R. S. Mo. 1909, Sec. 8057.



*calendar year.*" It is thus apparent that the real fallacy of the Court of Appeals in the DeGiverville case was in the failure to apply to said sections the statutory definition of the word "year" as used in those sections.

Certain other considerations inevitably lead to the conclusion that the tax year in Missouri is the calendar year next after the beginning of an assessment, and not the year beginning with such assessment. Until 1855 there seems to have been no statutory definition of the term "fiscal year," but by the Revised Statutes of that year, the fiscal year of the State is defined as beginning on the first day of October in each year and ending on September thirtieth of the following year.<sup>24</sup> That continued to be the fiscal year until 1868, when the fiscal year was defined as beginning on January first and ending on December thirty-first in each year.<sup>25</sup> Why was that change made? It is a fair assumption that the Legislature intended thereby to make the fiscal year coincide with the tax year, which, as we have shown, is the calendar year. But whether that be so or not, the Constitution of 1875 introduced into the fundamental law a new provision, which requires for its proper enforcement that the fiscal and tax years of the State shall coincide. If, as was held in the DeGiverville case, the tax year begins on June first and ends on May thirty-first following, it became the duty of the Legislature, because of said Constitutional provision to re-define the fiscal year to make it correspond with such tax year. The fact that it has not done so in the forty-four years that have elapsed since that provision became part of our organic law, would seem convincing that it regarded the tax year as corresponding with the fiscal or calendar year under the existing revenue laws.

The present constitution provides that "no county, city, town, township school district or other political corporation or subdivision of the state shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose."<sup>26</sup>

The preceding section prescribes the maximum tax rates that may be levied annually for county, city, town and school purposes respectively, without a vote of the people.

Our Supreme Court has said of those provisions: "The evident purpose of the framers of the constitution and the people who adopted it was to abolish in the administration of county and

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24. 2 R. S. Mo. 1855, p. 1540; Sec. 2; G. S. Mo. 1865, p. 86, Sec. 11.

25. Laws of Mo. 1868, p. 178.

26. Constitution Mo. 1875, Art X, Secs. 12 and 11.

municipal government, the credit system and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year. Section 12 (Art. X) is clear and explicit on this point. Under this section the county court might anticipate the revenue collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it."<sup>27</sup>

Although the Supreme Court held these constitutional restrictions to be self-enforcing and not to require legislative action to effectuate them,<sup>28</sup> the Legislature in 1879 amended the then existing statutes prescribing the order in which county warrants should be paid, to conform to Section 12 of Article X, by adding thereto the following: "Provided, however, that no warrant issued on account of any debt incurred by any county other than those issued on account of the ordinary and usual expenses of the county, shall be paid until all warrants issued for money due from the county on account of services that are usual, and for all expenses necessary to maintain the county organization for any one year, shall have been fully paid and liquidated."<sup>29</sup>

It is quite obvious that the expenses incurred and indebtedness created by a county court must be gaged and measured by the identical year or period of time for which the income and revenue is provided, in order to enforce and give due effect to the constitutional and statutory restrictions. If the tax year or year for which the revenue from taxation is provided begins on June first and ends on May thirty-first following, that same period of time becomes necessarily the measure of the expenses and indebtedness created by the county. On the other hand, if the revenue from taxation is provided from the calendar year, the calendar year must likewise be the basis for calculating the current expenses and indebtedness created. It is impossible to escape the conclusion that the tax year and the fiscal year of the counties and other municipal subdivisions of the State must correspond, if effect is to be given to the constitutional restriction.

Our Supreme Court has several times had occasion to examine the question as to what twelve months' period is to be taken as the

27. *Book v. Earl*, 87 Mo. l. c. 252.

28. *St. Joseph Board of Public Schools v. Patten*, 62 Mo. 444.

29. R. S. Mo. 1879, Sec. 5370; R. S. Mo. 1889, Sec. 3166; R. S. Mo. 1899, Sec. 6771; R. S. Mo. 1909, Sec. 3758.

measure of the expenses incurred and indebtedness created by a county without the sanction of a vote by the people, and, after full and repeated examination and consideration thereof, has decided that the statute above referred to, which defines the fiscal year as beginning on January first and ending on December thirty-first, applies as well to the fiscal operations of the counties and other municipal subdivisions of the state as to the state itself, and fixes the calendar year as the fiscal year for all subdivisions of the state.<sup>30</sup>

In the first of these cases, *Wilson v. Knox County*, the warrant sued upon was not in excess of the revenue provided and was, therefore, valid, if the fiscal year of the county ran from January first to December thirty-first, but would have been invalid under the constitutional provision, if, as the County contended, the fiscal year ran from March to March following. The court in banc, all the judges concurring, held that, although that day after the first Monday in March of each year, on which the County Collectors' accounts are audited and adjusted, "will become to such a collector practically the end of the fiscal year for him, *for all other purposes*, the fiscal year by the terms of the statute,<sup>31</sup> ended on the thirty-first day of December preceding, and according to the agreed facts this warrant is not void." And "in contemplation of law the revenues of the state for the year past are to be in the hands of its officers, on or before the first day of January of the next year. R. S. 1889, Section 7605." This language can have but one meaning, namely, that the taxes levied and collected in any calendar year, are the taxes of and revenue provided for that calendar year, notwithstanding the assessment of property on which they are based was begun, and such taxes became a lien on real estate when assessed and levied, as of June first in the preceding year.

In *State ex rel v. Appleby*, the ruling in the *Knox County* case was followed without comment; but in *State ex rel. vs. Allison*, where it was contended that the fiscal year of the counties commenced on May first in each year, the court re-examined the question fully and adhered to the conclusion it had arrived at in the *Knox County* case. The decision was put upon the grounds, first: That the proviso added to section 5370 in 1879 (§3166, R. S. 1889) to carry out the constitutional restriction, to the effect that no warrant shall be paid out of the county's revenue "for any one year" until the necessary expenses incurred in maintaining the county for that year are paid,

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30 *Wilson v. Knox County*, 132 Mo. 398; *State ex rel. Vaughn v. Appleby*, 136 Mo. 408; *State ex rel. Exchange Bank v. Allison*, 155 Mo. 325.  
31. *Laws Mo.* 1868, p. 178; R. S. Mo. 1889, Sec. 8589.

must be read in the light of the further provision in the same revision, "that the word 'year' shall mean a calendar year, unless otherwise expressed," thus leaving "no room for construction as to the meaning of the words 'for any one year,'" in the proviso first referred to; secondly, that since its amendment in 1868 to make the fiscal year conform to the calendar year, the statute defining the fiscal year applies to the fiscal affairs of the counties as well as of the state; and that the legislative intent that the fiscal year of the counties should be the same as that of the state is clearly shown by the changes made in other sections of the statutes to conform them to that intent.

That the court intended to and did decide that taxes under our system are assessed for the calendar year following the first day of June on which the assessment begins, clearly appears from the last paragraph of the opinion, in which the court says, in answer to the supposed difficulty or impossibility of conforming to the constitutional mandate if the fiscal year and the tax year were identical: "True, from January to May, one-third of the year, the county court cannot know the exact amount of revenue that the taxpayers will be called on to furnish. This uncertainty exists because the exact valuation of the taxable property in the county is then unknown, and the rate of taxation has not then been fixed, and yet expenses are necessarily incurred in carrying on the county government and maintaining its duty to the state. . . . Ordinarily there is not such a difference between the aggregate assessment of the county for one year, and the following as would put the county judges to sea, and if any unusual event had taken place since the last assessment likely to produce an extraordinary diminution or increase in the value of the county's property, the county judges would be apt to know it. The economic problem for them to solve is the amount of indebtedness it will be prudent to incur for the county for the county for four months in view of the probable income. As a common sense business problem there is nothing very difficult about it, and if the county judges are not to be accredited with sufficient discretion to determine a matter of that kind, then our whole system is wrong. The county court can keep safely within the constitutional limitation, and follow strictly the provisions of the statutes, and still count the fiscal year as beginning on January first, and ending December thirty-first."

If the decision in the De Giverville case is the law, then the difficulty which the supreme court speaks of in the foregoing passage

would exist—not from January to May, as the court holds it does—but only for a part of the month of May. Thus the decision of the Supreme Court is clearly in conflict with the decision in the De Giverville case, and must be considered as overruling that decision, although it was not expressly overruled or referred to by that court, particularly so in view of the fact that the De Giverville case had been pressed upon the court's attention in the earlier Appleby case and had not been there followed by the court.

In the De Giverville case the court treated the terms "fiscal year" and "taxable year" as synonymous; and, although prior to 1868 they were clearly not synonymous, since the act of 1868 making the calendar year the fiscal year of the State and Counties, they unquestionably have been synonymous. And since 1875 the fiscal year and taxable year must correspond in order to make the limitations of the Constitution effective. The decisions of the Supreme Court above referred to squarely hold that the calendar year is the fiscal year for the counties as well as the state, and also inferentially at least decide that the calendar year is the tax year as well; and, as those decisions are controlling, the rule announced in the De Giverville case that the tax year begins with the assessment on June first and ends on May thirty-first, should no longer be followed.

JOSEPH H ZUMBALEN.