

TAXATION: County board of equalization can not raise valuation on part of a tract, but must raise or lower valuation on whole tract.

April 25, 1939

Honorable Marion E. Lamb  
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Dear Mr. Lamb:

This will acknowledge receipt of your letter of April 19th, in which you submit the following inquiry:

"The board of equalization of Randolph County is now meeting, and they have a question submitted to them that they have requested an opinion from your office on.

A coal company owns thousands of acres of coal rights here in Randolph County. Last year this company only paid on a certain part of this land, and let the rest go. In other words say that a tract of 240 acres was assessed all in one piece at \$3.00 per acre, and only on 40 acres of this coal land did they desire to pay taxes, so they gave the collector a description of this 40 acres and gave him the money for that 40 acre tract, the taxes on the balance remains unpaid. Now this land has all been assessed again this year, and the board wants to know whether or not they can just raise the assessment on the part that the coal company will pay taxes on, or must they raise the whole tract just as the assessor has assessed it. The reason that they do not want to raise the entire tract is because they do not

want the Counties total assessment to include a large amount that they know in advance that the taxes on which will not be paid.

Please advise me whether or not the board can raise a portion of a tract which the assessor has assessed as a unit, or whole. Could the 40 acres be raised to \$6.00 per acre, and the remaining 200 left at a valuation of \$3.00 per acre or lowered."

The assessment of property for taxation is a matter regulated by statutes. We must, therefore, turn to the statutes to ascertain the proper procedure to be followed in assessing property.

Section 9780, R. S. 1929, provides, among other things, as follows:

" \* \* and when any person shall be the owner or original purchaser of a section, half section, quarter section or half quarter section, block, half block or quarter block, the same shall be assessed as one tract, and the name of such person placed opposite thereto, the lowest numbered range, township, section, block, lot or survey always to be placed first in the 'last list.' The assessor shall consolidate all lands owned by one person in a section, and all town lots owned by one person in a square or block, into one tract, lot or call, when it is practicable; \* \* \* "

Again, Section 9792, R. S. 1929, provides in part as follows:

"Each tract of land and town lot shall

be assessed and valued separately; but all land in a section and lots in a square or block, owned by one person, which are contiguous, or which can be consolidated into one tract, lot or call, shall be valued as one tract, lot or call, as contemplated in section 9780."

It would seem that the foregoing sections definitely define the unit of real estate upon which valuation shall be calculated for the purpose of assessment. That unit is a "tract" which is defined to be all of the land owned by one person in a section. It is apparent that some unit would have to be used as a basis of assessment, and the Legislature has declared that unit to be a tract composed of all the land a person owns in one section.

In the case of Yeaman vs. Lepp, 167 Mo. 61, the court was considering statutes corresponding to the statutes quoted above. In the course of the opinion, the court said at l.c. 70:

"So that, the provisions of section 7703, providing that each tract of land or lot shall be chargeable only with its own taxes, must be read and construed in connection with section 7553, defining what constitutes a tract or lot, and with section 7564 which requires the assessor to value each tract or lot, as defined by section 7553, separately, and with sections 7682 and 7683, which govern the manner of bringing suit to collect back taxes and the form of the judgment to be rendered, and the duty of the sheriff in executing the special fi. fa.

In other words, section 7553 requires all land owned by the same person in the same section, or all lands so owned in the same block, to be consolidated and

treated as one tract or one lot, and section 7564 requires each consolidated tract or lot to be assessed separately, when the land lies in the same section or the lots lie in the same square or block, and if they are contiguous or can be consolidated into one tract, lot or call. It is in this sense that the terms tract or lot as used in section 7703 and in section 7683, were employed by the lawmakers when they enacted those sections.

The defendant's contention that each forty acres is liable for its own taxes is therefore untenable."

If then the assessor must assess as one tract all of the land owned by one person in a section, what can the board of equalization do when they come to review the valuation of such tract? By Section 9812, the board of equalization has power to "hear complaints and to equalize the valuation and assessments on real and personal property \* \* \* \* so that each tract of land shall be entered on the tax book at its true value \* \* \*." By Section 9813, the board of equalization is directed to "raise the valuation of all such tracts or parcels of land and any personal property, such as in their opinion have been returned below their real value, according to the rule prescribed by this chapter for such valuation; \* \* \*."

The word "tracts" as used in Sections 9812 and 9813, supra, must evidently refer to the tracts as defined in Sections 9780 and 9792, supra. If, therefore, the board is to equalize the valuation on the tracts returned by the assessor, it must equalize the values as returned by the assessor by either raising or lowering those values.

It was held in the case of State ex rel vs. Bethards 9 S. W. (2nd) 603, that the board of equalization has no power to assess, but that its duty is to equalize, among the separate tracts, the valuations fixed by the assessor. The assessor puts a value on an entire tract. The board of equalization therefore must raise or lower that value. If the board of equalization can break up into parts the tract

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as returned by the assessor and put a value on each part, it would in effect be basing valuations upon different units than the Legislature has provided for.

CONCLUSION

It is, therefore, the opinion of this office that the county board of equalization can not raise or lower the valuation on a part of a tract of land, which has been assessed by the assessor, but can only change the valuation of the entire tract, assuming, of course, that the assessor has based his valuations upon tracts as provided in Sections 9780 and 9792, R. S. Mo. 1929.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
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