

TAXATION - Correction of Assessment Error

9792-9801
RS of Mo 1929

September 21, 1933.

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Mr. C. Arthur Anderson,
Prosecuting Attorney of St. Louis County,
Clayton, Missouri.

Dear Sir:

I have received a request from you under date of September 6, 1933, for an opinion, such request being contained in a letter as follows:

"We would like an opinion from your office relative to a tax question that has arisen here, which is as follows:

'A man made a personal tax return as follows:

Household & kitchen furniture, etc.	\$150.00
Piano	100.00
Jewelry, all kinds	50.00
Essex Coach	100.00
Buick Roadster	80.00

Total valuation \$480.00

In making out the tax book the \$50.00 valuation of jewelry was entered on the tax book as \$5000.00.'

After this was done, the books were certified to the clerk and are out of the Assessor's hands. How can this error be legally corrected."

I. VALIDITY OF TAX. It is my opinion that so much of the tax as is based on the difference between the valuation of \$50.00 as submitted by the taxpayer on jewelry and \$5,000.00 as entered on the tax book is invalid and uncollectible for the following reasons:

The \$5,000.00 assessment is a violation of Revised Statutes of Missouri, 1929, Section 9792 which provides that property must be assessed "according to its true value in money at the time of the assessment" and from the statement of facts in your request for an opinion I assume that the change of valuation was a clerical error, and that \$5,000.00 does not represent the true value of the jewelry.

Even if the raised figure were "the true value" of the jewelry, the valuation returned by the taxpayer cannot be raised without notice to him. In the case of *State ex rel Ziegenhein v. Spencer*, 114 Mo. 574, 21 S. W. 837 (1892) the valuation placed on personal property in the return of a taxpayer was raised without notice to him, and the court held that so much of the tax as represented the increase was void even though the statutes did not require such notice. The court said (l. c. 576):

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"Under the provisions of sections 7532 and 7535, Revised Statutes, 1889, if no list be delivered to the assessor in proper time and manner, 'the assessor shall himself make out the list,' etc. The failure of the taxpayer to give his list is the basis and condition precedent to any authority in the assessor 'to make out the list' for him. In this case then, the act of the assessor was jurisdictionless and void, inasmuch as a proper list had already been returned by the defendants, and consequently no basis for the exercise of the assumed power existed. When the defendants in this cause delivered their list to the assessor, without objection from him, they had the right to presume, and the law justified them in that presumption, that their valuation of the property was accepted and would remain as delivered. And even if the assessor had authority to raise the assessment he could not do this without notice to the party to be affected thereby."

II. REMEDY FOR CORRECTION. So much of the assessment of the jewelry as is in excess of the taxpayer's return, therefore, being void, the proper method for correcting such error would be by an appeal to the County Court under Revised Statutes Missouri 1929, Section 9808, which provides in part as follows:

"The county court of each county may hear and determine allegations of erroneous assessment * * * at any term of said court before the taxes shall be paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the county board of equalization or court of appeals for the purpose of correcting such errors or defects or mistakes."

Presumably, the taxpayer, upon making his return and having it accepted without objection, would, under the authority of the case above cited, have a right to assume that his valuation would be accepted, or that notice would be given to him of its unacceptability, and, therefore, would not have appealed to the board of equalization. It would seem, therefore, that he would be able to make the affidavit required by Section 9808, and the county court would have jurisdiction to declare the assessment erroneous. Section 9809 provides as follows:

"Sec. 9809. Corrections to be made on tax books. - The clerk of the county court shall immediately correct the tax book, and the copy thereof furnished for the use of the collector, under any order which may be made by said court in pursuance of the foregoing section; and if, by such correction, any alteration is made in the value of the property or the amount of the taxes, he shall certify

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the same to the state auditor, who shall, on the settlement, allow the collector credit for any sum or sums to which such correction may entitle him."

Very truly yours,

ASSISTANT ATTORNEY GENERAL.

APPROVED:

ATTORNEY GENERAL.