

PROPERTY: ✓

TAXATION: ✓ Tax commission has no jurisdiction to reassess property if resort to county board of equalization is not made before applying to tax commission.

June 14, 1933. ⁶⁻²⁰



Hon. Jesse A. Mitchell
Commissioner
State Tax Commission
Jefferson City, Missouri

Dear Mr. Mitchell:

This is to acknowledge your letter of June 8th, 1933, which letter is as follows:

"This Commission was asked to reassess certain property in St. Louis City. A hearing was set for June 5, at which time the writer appeared to take evidence. The City Counselor of St. Louis City questioned the authority of the Commission in the matter involved. The attorneys for both sides consented to waive a decision on the part of the Commission as to their jurisdiction to decide and the hearing proceeded with the understanding a decision would be withheld until the matter of jurisdiction was determined. The accompanying brief sets forth the matter very fully. Will you kindly favor us with your opinion as to our jurisdiction? "

The Laclade Trust Company of St. Louis filed its personal return for taxes, by its officers, for the year 1932. Subsequently said bank was placed in liquidation. After it was in liquidation, an attempt was made to appear before the board of equalization of the City of St. Louis to have a reassessment of its property. However, no appeal in writing was filed before the local board by claimant. A petition for reassessment was filed with the tax commission and before testimony was taken an objection was made questioning the authority or jurisdiction

of the commission to entertain such proceedings for the reason that claimant did not file an appeal in writing to the board of equalization from the assessment of its property specifying the matter for which it complained. Other objections were assigned but need not be here set out. The commission took testimony, reserving its ruling on the question of jurisdiction (which was not waived by hearing of the evidence but fully and truly agreed and understood that if the commission did not have jurisdiction a decision would be rendered by it to that effect).

St. Louis is a city having a population of over five hundred thousand inhabitants, and it has a charter. The provisions of same may not violate either the Constitution of the State or any general law of the State. It is further made a city without a county perforce of constitutional provisions.

State ex inf. Gentry, Attorney-General v.
Armstrong et al, 286 S. W. 705.

The sole question presented by your inquiry being: May the tax commission hear and determine a matter of over-assessment presented by a claimant if such claimant did not appeal to the board of equalization in the first instance?

Article XV, Assessment Division, Section 14 of the Revised Code of St. Louis, 1926, reads as follows:

"Any person may appeal in writing to the board of equalization from the assessment of his property specifying the matter of which he complains."

This section is similar to Section 9802 R. S. 1929, which is as follows:

"Every person who thinks himself aggrieved by the assessment of his property may appeal, and every appeal shall be in writing, and verified by affidavit, and shall state specially the grounds of the appeal and the matter or thing complained of, and no other matter shall be considered by the board."

You will therefore note that the matter of adjust valuations placed on property assessed by the assessor was contemplated to be brought before the local authorities in the first instance so that they might determine the matter and after the local board heard and determined same and the claimant be still aggrieved, he could then petition the State Tax Commission for a hearing, and so on follow the procedure prescribed in the statutes.

In the instant case the claimant has not availed itself of the procedure outlined in the statutes and we are of the opinion that it is barred from appealing to the Tax Commission for relief because of its failure to first apply to the Board of Equalization.

In the case of State ex rel. Wyatt, Collector, v. Hoyt, Appellant, 123 Mo. 348 l. c. 356, the court in its opinion held,

"If the owner thinks injustice has been done by the assessor, he has the right to appeal to the board of equalization and have his wrongs remedied. It has been held that the action of the assessor under the revenue law is judicial, and when the jurisdiction to assess the property exists, his valuation, unless appealed from, is conclusive upon the one liable for the taxes."

Also, in the case of Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 19 S. W. (2d) 746 l. c. 751, the court in its opinion made this observation,

"It is no doubt true that the state tax commission was not intended to supplant local assessing officers and boards, etc.,
* * * * *"

Also, in the case of State ex rel. Hawkin v. Edwards, 286 S. W. l. c. 26, the court held,

"The defendant, therefore, having notice that his property was overvalued in the assessment, had his remedy plainly pointed out by the statute. The courts cannot take up the burden which the statute places upon assessors and boards of equalization. He failed

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to follow the method pointed out by the statute which is the one available to the taxpayer whose property is excessively valued."

We have not set out the powers and the duties of the State Tax Commission which are full and adequate not only to supervise but to review assessments not made conformably to law, and to revise them if such be the fact.

In the language used by the court in the Brinkerhoff-Faris Trust & Sav. Co., v. Hill, supra, we are strengthened in our conclusion that the Tax Commission does not have jurisdiction to hear the matter herein considered, namely, that to permit taxpayers throughout the state who feel aggrieved through alleged discriminatory assessments of their property, to stand silently by till after the boards of equalization have completed their work and then make the protest that their assessments are discriminatory for the first time to the State Tax Commission.

We are returning herewith the brief appended to your letter.

Yours very truly,

James L. Hornbostel,
Assistant Attorney-General.

APPROVED

ROY McKITTRICK
Attorney-General.

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Enc.