

TAXATION: Jurisdiction of Tax Commission to entertain complaint on assessments is not dependent on County Board of Equalization having been appealed to.

October 27, 1942



Honorable Jesse A. Mitchell
Chairman, State Tax Commission
Jefferson City, Missouri

Dear Sir:

On July 26, 1939, in an opinion to the Honorable Clarence Evans, we concluded that it was not necessary for a taxpayer to appeal first to the County Board of Equalization when he felt aggrieved as to the assessment of his property, before such matter could be presented to the Tax Commission.

On June 14, 1933 in an opinion to the Honorable Jesse A. Mitchell, where the same question was presented, we concluded just the opposite, holding that unless the taxpayer first appealed to the County Board of Equalization, the State Tax Commission had no jurisdiction to entertain a proceeding to review the assessment.

You have called our attention to the conflict in these opinions and ask that we again review this question. The question, stated precisely is: May the State Tax Commission entertain the complaint of a taxpayer concerning the assessment of his property when no previous complaint on said assessment has been made to the County Board of Equalization?

In the assessment of real and personal property for taxation, the assessor must take a list of all the taxable property in his county (Section 10950 R.S. Mo., 1939) or in the event no list is made by the taxpayer, the assessor may make a list on his own view (Section 10954 R. S. Mo., 1939). After a list of the taxable property is obtained, it is the duty of the assessor to value all of said property at its true value in money (Section 10981 R.S. Mo., 1939). These valuations are to be shown on the assessment rolls or book which the assessor makes up (Section 10981 R.S. Mo., 1939) and said books are to be delivered to the County Court on or before January 20th, in each year (Section 10990 R. S. Mo., 1939).

Section 10992 R. S. Mo., 1939, provides:

"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."

An appeal thus taken from the assessor's assessment, is heard by the County Board of Equalization (Sections 10992, 10993 and 11004 R. S. Mo., 1939) when it meets on the first Monday in April each year (Section 11001 R. S. Mo., 1939).

Section 11027 R. S. Mo., 1939, deals with the powers of the State Tax Commission. It provides as follows:

"It shall be the duty of the commission, and the commissioners shall have power and authority, subject to the right of the state board of equalization, finally to adjust and equalize the values of real and personal property among the several counties of the state, as follows:

"* * * * *

"(3) To raise or lower the assessed valuation of any real or personal property, including the power to raise or lower the assessed valuation of the real or personal property of any individual, copartnership, company, association or corporation: Provided, that before any such assessment is so raised, notice of the intention of the commission to raise such assessed valuation and of the time and place at which a hearing thereon will be held, shall be given * * * * * as provided in section 11028."

Section 11028, R. S. Mo., 1939, provides:

"After the various assessment rolls required to be made by law shall have been passed upon by the several boards of equalization and prior to the making and delivery of the tax rolls to the proper officers for collection of the taxes, the several assessment rolls shall be subject to inspection by the commission, or by any member or duly authorized agent or representative thereof, and in case it shall appear to the commission after such investigation, or be made to appear to said commission by written complaint of any taxpayer that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said commission may issue an order directing the assessing officer whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered, at a time and place to be stated in said order, said time to be not less than five days from the date of the issuance of said order, and the place to be at the office of the county court at the county seat, or at such other place in said county in which said roll was made as the commission shall deem most convenient for the hearing herein provided."

The county board meets on the first Monday in April in each year (Section 11001 R. S. Mo., 1939) and the State board meets on the last Wednesday in February in each year (Section 11035 R. S. Mo., 1939). After these boards have equalized and adjusted the tax rolls the county clerk must, within ninety (90) days, extend said taxes on the books (Section 11048 R. S. Mo., 1939). After the books have been adjusted and the tax extended the books are to be delivered to the collector (Section 11052 R. S. Mo., 1939).

It will be noticed that Section 11028 supra, limits the power of the Commission to being exercised after the assessment rolls are adjusted and before the tax books are delivered to the collector. Thus, in this interim (one of indefinite duration as the preceding paragraph shows) the Tax Commission either on its own motion or on complaint may review assessments and raise or lower the valuation.

There is nothing about the language in Sections 11027 or 11028, indicating that the jurisdiction of the tax commission is dependent upon there first having been a complaint made to a county board of equalization, sitting as a board of appeals to review the assessor's valuations.

None of the cases relating to the Tax Commission's power have ever passed upon this question, but the general language in *First Trust Co. v. Wells*, 23 S.W. (2d), 108 (Mo. Sup.) supports our present view that the jurisdiction of the tax commission is not dependent upon there having been a previous appeal to the county board of equalization. The court stated in said case, at l. c. 111:

"Our statutory scheme of assessing property for the purpose of levying ad valorem taxes affords the taxpayer at every stage of the proceeding an opportunity to be heard with respect to the correctness of the assessment of his property. Indeed, the right to such hearing is not foreclosed until the tax books are actually delivered to the officers intrusted with the duty of collecting the taxes. Even though the action of the state board of equalization completes the assessment, its decisions may be opened up for rehearing upon a proper showing, through the mediation of the state tax commission. *Brinkerhoff-Faris Savings & Trust Co. v. Hill* (Mo. Sup.) 19 S. W. (2d) 746, 751."

In *Brinkerhoff-Faris Savings & Trust Co. v. Hill* 19 S. W. (2d) 746 (Mo. Sup.) the court in discussing the powers of the tax commission, said at l. c. 751:

"* * * and it has authority, on the complaint of any taxpayer and after the various assessment rolls have been passed upon by the several boards of equalization, but before the delivery of the tax rolls to the proper officers for collection, to hold hearings for the purpose of determining whether any property subject to taxation has been omitted from the assessment rolls and whether any property thereon has been improperly valued, and to make such changes with respect thereto as shall be necessary to make the assessment rolls conform to the facts as found by them."

The holding of these two cases was again expressly approved in State ex rel. Thompson v. Jones 41 S. W. (2d) 393 (Mo. Sup.)

As heretofore stated, we do not think that the jurisdiction of the tax commission is dependent upon there having been an appeal to a county board of equalization. The statutes are silent on that subject and the Supreme Court, in the cases cited, supra, has taken notice of that statutory silence on three occasions by ruling that the tax commission could review an assessment on complaint at any time between the adjustment of the assessment rolls and the delivery of the books to the collector.

However, before concluding this opinion, we think it well to note that while the tax commission may entertain a complaint about an assessment without there first having been an appeal to the county board, that if said tax commission upon hearing such complaint, approves the assessment as made, there can be no resort to court action to review the finding of the tax commission. As was said in State ex rel. Hawkins v. Edwards 286 S. W. 25 (Mo. Sup.) at l. c. 26:

"* * * The tax bill is prima facie evidence that the assessor performed his duty in respect to it, and filed his book, as the statute requires, with the county clerk. Such filing imparts general notice of its contents. State ex rel. v. Reed & Sutton, 159 Mo. loc. cit. 85, 60 S.W. 70. Section 12812, R. S. 1919, provides that any person

who thinks himself aggrieved by the assessment of his property may appeal. 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 to follow the method pointed out by the statute which is the one available to the taxpayer whose property is excessively valued. Meyer v. Rosenblatt, 78 Mo. 495; State ex rel. v. Western Union Telegraph Co., 165 Mo. loc. cit. 523, 524, 65 S. W. 775. * * * * *

See also State ex rel. Wyatt v. Hay 123 Mo. 348, 356.

CONCLUSION

It is therefore the opinion of this department, that the State Tax Commission has jurisdiction to entertain a complaint on assessments of property even though an appeal from such assessments has not been taken to a county board of equalization.

Respectfully submitted

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APPROVED:

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