

ASSESSMENT:
COUNTY COLLECTOR:
MOTOR VEHICLES:
PERSONAL PROPERTY TAX:
STATE TAX COMMISSION:
TAXATION:

The State Tax Commission has no authority to equalize only a portion of any class of property established by Section 138.390, RSMo. Its report and order purporting to decrease the valuation of "Motor vehicles, trucks, airplanes, motorcycles" in St. Louis City by 50 per cent in effect subdivides the statutory class for "other

tangible personal property" and establishes a new class. It is the opinion of this office that the report and order is beyond the power of the Commission and therefore, is void and without effect.

OPINION NO. 387

September 14, 1967

Honorable Paul J. Simon
State Representative
55th District
2756 A Lafayette
St. Louis, Missouri 63104



Dear Representative Simon:

This is in answer to your request for an official opinion of this office respecting the validity of a report issued by the Missouri State Tax Commission on July 12, 1967, ordering the Assessor of the City of St. Louis to decrease the valuation of "Motor vehicles, trucks, airplanes, motorcycles" within the City by 50% to \$82,261,895.

The constitutional provision creating the Missouri State Tax Commission gives it two basic duties; "to equalize assessments as between counties" and "to hear appeals from local boards in individual cases and, upon such appeal, to correct any assessment which is shown to be unlawful, unfair, arbitrary or capricious." Article X, Section 14, Constitution of Missouri 1945.

The first of these duties gives the Commission original jurisdiction to adjust the valuation of property within a county so that such property is valued equally with like property in other counties. The second gives the Commission appellate jurisdiction to correct wrongful valuation of individual pieces of property upon appeal through the county boards of equalization.

The Commission's duty "to equalize assessments as between counties" is implemented by Section 138.390, RSMo, which provides:

"1. Between the dates of June twentieth and the second Monday in July, 1946, and between the same dates each year thereafter, the state tax

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commission shall equalize the valuation of real and tangible personal property among the several counties in the state in the following manner: With the abstracts of all the taxable property in the several counties of the state and the abstracts of the sales of real estate in such counties as returned by the respective county clerks and the assessor of the city of St. Louis, the commission shall classify all real estate situate in cities, towns, and villages, as town lots and all other real estate as farming lands, and shall classify all tangible personal property as follows: Banking corporations, railroad corporations, street railroad corporations, all other corporations, horses, mares and geldings, mules, asses, and jennets, neat cattle, sheep, swine, goats, domesticated small animals and all other livestock, poultry, power machinery, farm implements, other tangible personal property.

2. The commission shall equalize the valuation of each class thereof among the respective counties of the state in the following manner:

(1) It shall add to the valuation of each class of the property, real or tangible personal, of each county which it believes to be valued below its real value in money such per cent as will increase the same in each case to its true value;

(2) It shall deduct from the valuation of each class of the property, real or tangible personal, of each county which it believes to be valued above its real value in money such per cent as will reduce the same in each case to its true value."

Paragraph 2 of Section 138.400, RSMo, provides that "This report shall be delivered to the clerks of the several counties so that it may be in the possession of county boards of equalization on or before the second Monday in July." The second Monday of July fell on July 10, of this year and the report was dated July 12.

So far as here pertinent, the report issued by the Commission was as follows:

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REAL ESTATE	INCREASE	DECREASE	VALUATION
1-3. Lands			None
4-6. Town Lots			\$1,250,219,410
7. Total valuation of real estate	XXXXXXXXXXXXX	XXXXXXXXXXXXX	\$1,250,219,410
TANGIBLE PERSONAL PROPERTY.			
8. Horses, mares and geldings			\$ 9,000
9. Asses and jennets			None
10. Mules			None
11. Neat cattle			5,010
12. Hogs			60
13. Sheep			190
14. Goats			None
15. Rabbits, animals and other live stock			None
16. Poultry			None
17. Bee colonies			None
18. Farm and other machinery			6,540
19. Household property			25,742,990
20. Motor vehicles, trucks, airplanes, motorcycles		50%	82,261,895
21. All other tangible personal property not above enumerated			100,628,620
22. Locally assessed tangible personal property of railroad, telegraph, telephone, electric light, electric transmission, pipe line and bridge companies. Chapters 151 and 153, R. S. Mo. 1949			8,400,000
1959	XXXXXXXXXXXXX	XXXXXXXXXXXXX	
Total valuation of tangible personal property	XXXXXXXXXXXXX	XXXXXXXXXXXXX	\$ 217,054,305
	XXXXXXXXXXXXX	XXXXXXXXXXXXX	
Total value, real and tangible personal	XXXXXXXXXXXXX	XXXXXXXXXXXXX	\$1,467,273,715

Two contentions have been made questioning the validity of this report. The first is that the time requirement of Sections 138.390 and 138.400 is mandatory, and the Commission had no authority to act after the second Monday in July. (It should be noted that the verified abstract which the City assessor is required by Section 137.515, RSMo, to deliver to the Commission by the 20th day of June to enable it to determine the necessity of a valuation change was not delivered until July 3, 1967). The second argument is that the Commission had no authority to adjust the valuation of any property other than an entire class of property listed in Section 138.390, RSMo. In view of our opinion that the second contention is meritorious, we make no decision as to the merits of the first.

Section 138.390 requires the State Tax Commission to classify all tangible personal property into certain specified classifications

and to equalize the valuation of each class thereof among the respective counties by adding to or deducting from each class as necessary. The various classes of tangible personal property are listed in this section, and do not include as a special class "Motor vehicles, trucks, airplanes, motorcycles". These items must be considered as included within the general, inclusive class "other tangible personal property".

In attempting to segregate and equalize the valuation of a type of property not specifically classified, the Commission seeks to subclassify and adjust only a portion of a particular class of property within a county without disturbing the valuation placed upon another portion of the same class. This would constitute an intra-county equalization which the Courts of this state have consistently found to be beyond the power of the Commission except in accordance with its appellate authority to correct wrongful assessments of individual properties.

In our opinion, the decision in *State ex rel Wyatt v. Vaile*, 122 Mo. 33, 26 S.W. 672, is directly in point and determinative of the question. At the time of this decision, prior to the creation of the State Tax Commission, the State Board of Equalization was authorized "to adjust and equalize the valuation of real and personal property among the several counties of this state." Neither real nor personal property was further classified. The State Board of Equalization attempted to divide and adjust separately two subclasses of real estate within a county by an order to reduce the valuation of lands in Jackson County by twenty-five percent and town lots by fifty percent.

The Court held that the order was void as the State Board had no power to go into a county and equalize the value of parcels or classes of real estate therein. It could raise or decrease by a uniform percentage the valuation of all real property within a county or of all personal property within a county without disturbing the other, but, it could not adjust the values of different types or classes of real property within the same county.

This is what the Commission has attempted to do in this case. The result of its report and order would be to decrease within the City of St. Louis, the valuation of motor vehicles, trucks, airplanes, and motorcycles; property included within the class "other personal property", without disturbing or changing the valuation of other portions of the same class. Attempting to subclassify and adjust the valuation of only a portion of a class of property is tantamount to adjusting the valuation of individual items of property which is beyond the authority of the Commission except through appeal from the various Boards of Equalization. In *re St. Joseph's Lead Company*, Mo.Sup., 352 S.W.2d 656, 663; *Foster Bros. Mfg. Co. v. State Tax Commission*, Mo.Sup., 319 S.W.2d 590; *First Trust Company v. Wills*, Mo.Sup., 23 S.W.2d 108, 111; *State v. Dircks*, Mo.Sup., 11 S.W.2d 38.

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A letter was sent with the report of the State Tax Commission which, so far as here pertinent reads as follows:

"The Commission has issued an order to reduce the amount of (\$82,261,895) on 'other tangible personal property' which shall include all personal property other than 'banking corporations, railroad corporations, street railroad corporations, and all other corporations, horses, mares and geldings, mules, asses and jennets, neat cattle, sheep, swine, goats, domesticated small animals and all other livestock, poultry, power machinery, farm implements.'

The Commission is considering automobiles as 'other tangible personal property.'

It is therefore ordered that such reduction be applied to the valuation of the tangible personal property."

This letter indicates the intention of the Commission to decrease the valuation of all "other tangible personal property." But this is not what was done. If we consider "other tangible personal property" to include all such property not otherwise specifically classed by Section 138.390, the valuation must include not only the \$82,261,895 reduced valuation placed upon "Motor vehicles, trucks, airplanes, motorcycles" but also the \$100,628,620 valuation placed on "all other tangible personal property not above enumerated" and the \$25,742,990 valuation placed on "Household property" which also is not specifically classified by Section 138.390. A decrease of 50% of that amount would result in a decrease in the assessed valuation of \$145,447,700 rather than \$82,261,895 as the Commission indicated it desired.

It is our understanding that the reason for the proposed reduction was that the Commission felt that automobiles were given a higher assessment by the City of St. Louis than are given elsewhere in the State. Presuming this to be true, this fact in itself would not be sufficient to permit the decrease of the valuation of the class "other tangible personal property" unless it can be shown that the total value of all the property in this class is comparatively over valued. Even though automobiles may be over valued in St. Louis, other property, included in the class "other tangible personal property" may be equally under valued and no necessity would exist for raising or lowering the valuation of the entire class.

It is clear from the report that the Commission intended to decrease the valuation of "Motor vehicles, trucks, airplanes, motorcycles" only and not to adjust, except as a necessary incident, the valuation of "other tangible personal property." It is true that motor vehicles are unusually susceptible to exact valuation and therefore to inter-

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county equalization and that Section 138.390 which provides a separate classification for property such as "mules, asses and jennets" and "neat cattle" rather than motor vehicles might be considered obsolete. Nevertheless, however laudable its purpose, the State Tax Commission may only equalize each class as a whole and is not empowered to subdivide a class and attempt to equalize such a subclass within a particular county. This results in an intracounty equalization which is beyond the authority of the Commission and any order attempting to effect such a subclassification is void and of no effect.

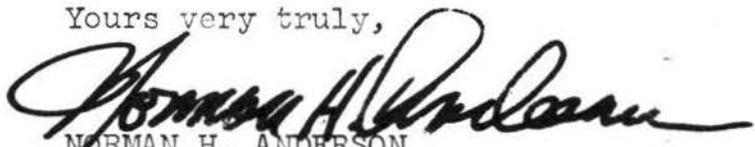
The General Assembly has established classifications of all tangible personal property and has authorized the State Tax Commission to equalize the valuation of tangible personal property of each class so established. Further classification of tangible personal property to include a separate class for "Motor vehicles, trucks, airplanes, motorcycles," is a legislative function and can be effectuated only by the General Assembly.

CONCLUSION

The State Tax Commission has no authority to equalize only a portion of any class of property established by Section 138.390, RSMo. Its report and order purporting to decrease the valuation of "Motor vehicles, trucks, airplanes, motorcycles" in St. Louis City by 50 per cent in effect subdivides the statutory class for "other tangible personal property" and establishes a new class. It is the opinion of this office that the report and order is beyond the power of the Commission and therefore, is void and without effect.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Yours very truly,



NORMAN H. ANDERSON
Attorney General