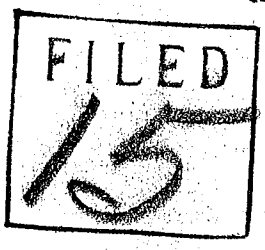
TAXATION:
TOWNSHIP ASSESSORS:
COUNTY ASSESSORS:
ASSESSMENTS:

After township assessor has delivered assessor's book to county clerk he may not repossess it in order to correct erroneous valuations of property. Such corrections may be made only by county board of equalization.



September 6, 1955

Honorable John R. Caslavka
Prosecuting Attorney
Dade County
Greenfield, Missouri

Dear Mr. Caslavka:

This is in response to your request for opinion dated July 16, 1955, which reads as follows:

> "One of the township assessors of Dade County, Missouri (which is under Township Organization), for the calendar year, 1955, duly assessed the residents of his township, and had them affix their signatures to the assessment sheet. However, when he transcribed the figures to the Assessor's Book, he changed the figures so that the amounts on the assessment sheet and the Assessor's book do not correspond. Obviously the amounts should correspond and it is impracticable for the County Board of Equalization to call each taxpayer from this Township to meet with the Board of Equalization for this purpose. I would appreciate your opinion on the correct way of making this change, and if it is necessary or possible to re-assess all the property and make a new assessor's book."

The manner and mode of assessing property for taxation in counties of township organization is provided for in Section 137.440, RSMo 1949, which reads, in part, as follows:

> "The assessor or some suitable person empowered by him, shall, within the time prescribed by law, and after being furnished with the necessary blanks proceed to take a list of the taxable property of

> his township and assess the value thereof in accordance with the provisions of the general laws of this state in relation to the assessment of real and tangible personal property by county assessors, in all things pertaining to the discharging of his official duties, except when the same may be inconsistent with the provisions of this chapter; * * *"

To ascertain the solution to your problem we must revert to the general law applicable to the assessment of property by county assessors.

You have made a statement in your letter by way of premise with which we do not agree. You have said that the valuations placed on the assessment lists by the property owner should correspond with the valuations placed on the assessor's book by the assessor. That is not necessarily true.

It has been held by the Supreme Court on many occasions that the assessor is not bound by the valuations placed by the taxpayer on the assessment list. For example, it was said in State ex rel. Dobbins v. Reed & Sutton, 159 Mo. 77, 60 S.W. 70, at Mo. l.c. 83, 85:

> "While the above section requires that the list to be furnished to the assessor by the taxpayer shall contain a list of the real estate and its value, and while said section requires the taxpayer to make affidavit to such list, yet that is not binding on the assessor, nor does said list constitute the assessment of the taxpayer's real estate. * * *
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> "When, then, is the time at which the assessment of real property is required to be made? Certainly it is not at the time the owner of the land delivers his list to the assessor, nor until the assessor enters the list upon his assessor's book, because by the very letter of the statute he is required to value and assess all property on the <u>assessor's book</u>, which clearly means

> that it cannot be assessed until the list is copied into the assessor's book. It is not so with respect to personal property which he is required to assess according to its cash price at the time of listing the same for taxation."

In making the assessments the assessor acts in a judicial capacity (State ex rel. Wyatt v. Hoyt, 123 Mo. 348, 27 S.W. 382) and jurisdiction attaches when he makes out the assessor's book (State ex rel. Steel v. Phillips, 137 Mo. 259, 264, 38 S.W. 931). He is guided not alone by the list returned by the taxpayer but also takes into consideration the assessment books of previous years and other proper matter (Wymore v. Markway, 338 Mo. 46, 89 S.W. (2d) 9, 14). Therefore, the valuations placed in the assessor's book by the assessor need not necessarily correspond with those placed on the assessment list by the taxpayer; they may be either higher or lower.

Of course, if they are higher, notice of the increase must be given the taxpayer. Section 137.180, RSMo 1949, with regard to real estate expressly requires such notice:

> "Whenever any assessor shall increase the valuation of any real property he shall forthwith notify the record owner of such increase, either in person, or by mail directed to the last known address; every such increase in assessed valuation made by the assessor shall be subject to review by the county board of equalization whereat the land owner shall be entitled to be heard, and the notice to the land owner shall so state."

Although the statutes do not expressly require notice of an increase in valuation of personal property, the courts have held that such notice is necessary. State ex rel. Ziegenhein v. Spencer, 114 Mo. 574, 21 S.W. 837; State ex rel. Ford Motor Co. v. Gehner, 325 Mo. 24, 31, 27 S.W.(2)1; Wymore v. Markway, 338 Mo. 46, 89 S.W. (2d) 9.

The entire scheme of assessment was outlined by the Supreme Court in State ex rel. Pehle v. Stamm, 165 Mo. 73, 65 S.W. 242, at Mo. l.c. 80:

> "The scheme outlined by the statute above referred to evidently is, that all property subject to taxation shall be assessed by the county assessor, whose judgment as to the value thereof should control in the first instance. In order to enable the assessor to properly discharge his duties the State and county are to furnish him with lists and plats and the property-owner with verified lists of his taxable property. To guard against an overvaluation by the assessor, the right of appeal is given to all persons believing themselves aggrieved thereby, and for that purpose a court of appeals is established to determine such appeals and correct the assessments accordingly. With a view of bringing the assessment to the attention of all persons assessed, the assessment is required to be filed in a public office accessible to every person, two months before the meeting of the court of appeals, the time and place of which is unchangeably fixed by law. To provide against undervaluation of individuals, a board of equalization is created, with power to equalize assessments by decreasing excessive valuation, and increasing valuations deemed too low."

If the changes in valuation by the assessor were intentional and if a taxpayer having had notice of an increase in valuation feels himself aggrieved, his remedy is with the county board of equalization, for no other body would have the authority to change the valuations.

Assuming, however, that the discrepancies between the assessment lists and the assessor's book were not intentional but were mere errors in transferring the figures from the list to the assessor's book, the question remains as to whether he now has the authority to repossess himself of the book and correct his own errors.

Section 137.245, RSMo 1949, requires the assessor to file a verified copy of the assessor's book with the county clerk on

or before May 31. We assume that this has been done and that the assessor's book is now in the hands of the county clerk.

As stated above, the assessor in making his assessments acts in a judicial capacity and jurisdiction attaches when he makes out the assessor's book. It was further held in the Wymore v. Markway case, supra, 89 S.W. (2d) l.c. 13:

> " * * * the return of this book to the county clerk's office completes the assessment and terminates his jurisdiction. * * *"

A situation analogous to this one was presented in the case of State ex rel. Flaugh v. Jaudon, 286 Mo. 181, 227 S.W. 48. There, the city assessor of Kansas City had duly assessed the property of the city and had delivered his books to the city clerk as required by the city charter. Subsequent to that, the State Tax Commission increased the valuation of land in Kansas City by twenty per cent. Thereafter, the city assessor repossessed himself of the assessor's books from the city auditor and increased the valuations so as to reflect the twenty per cent increase ordered by the Tax Commission for state and county purposes. The facts differ from this case in that more steps had been taken and that it was a city assessment, but we believe the reasoning of the court equally applicable to this case. The court said, Mo. l.c. 201:

> "The question here is, was the Assessor's action completed prior to June 1, 1920? The agreed facts show that the City Assessor did duly deliver his Land Assessment Books to the City Clerk on March 15, 1920. Under the city charter he had then performed his full duties. (Sec. 6, Art. 5, Charter of Kansas City.)
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> "By Section 12 of Article 5, this delivery to the City Clerk is a delivery likewise to the Common Council. There is no authority in the city charter for such assessor to repossess himself of these delivered books, and thereafter make a new and different assessment. His work was completed upon the delivery of the books to the City Clerk and through such clerk to the Common Council. (Secs. 6 and 12, Art. 5, City Charter.) For this act of the Assessor in re-possessing himself of the books, and making therein a new and different

> assessment, the respondent should be able to point to the authority for such act. He has not done so, and cannot do so. The books as delivered by the City Assessor to the City Clerk on March 15, 1920, with the land values therein, are the books to control the city taxes for 1920. The subsequent attempted assessment is void, as being unauthorized either by charter or law. This must be true for the reason that the city scheme provided for a Board of Appeals. To this board the taxpayers could at least go for the corrections of irregularities and mistakes in the assessor's work. * * *"

By the same token, there is no authority in law for the township assessor to repossess himself of the assessor's book from the county clerk. When he delivers it to the county clerk, the assessment is complete and his jurisdiction ceases. If there are errors in the valuations, the scheme of taxation provides that they are to be corrected by the board of equalization (Sec. 137.275, RSMo 1949; Sec. 138.060, RSMo 1949).

The Supreme Court of Missouri said in State ex rel. Ford Motor Co. v. Gehner, 325 Mo. 24, 27 S.W. (2d) 1, at Mo. l.c. 31:

> "The assessments made on personal property by the assessor are subject to review of the board of equalization. This body and the assessor act judicially. (St. Louis, etc. Insurance Company v. Charles, 47 Mo. 462, l.c. 466; North Missouri Railroad Company v. Maguire, 49 Mo. 482, l.c. 483; State ex rel. Wyatt v. Hoyt, 123 Mo. 348, l.c. 356, 27 S.W. 382; State ex rel. Johnson v. Merchants & Miners Bank, 279 Mo. 228, l.c. 234, and cases, 213 S.W. 815.) So far as the same officers have analogous duties in respect to the assessment and equalization of income taxes, their acts in connection therewith are likewise judicial in character.
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> "The assessment of personal property made by the assessor becomes final unless changed by the board of equalization. Thereafter the assessing authorities have no jurisdiction or power to reopen the assessment. (State

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ex rel. Hopkins v. Tobacco Co., 140 Mo. 218, l.c. 223, 41 S.W. 776; State ex rel. Hayes v. Seahorn, 139 Mo. 582, l.c. 610, 39 S.W. 809; State ex rel. Wenneker v. Cummings, 151 Mo. 49, l.c. 59, 52 S.W. 29.) Nor may these officers increase the assessment without notice to the taxpayer. (State ex rel. Ziegenhein v. Spencer, 114 Mo. 574, 21 S.W. 837.) * * *"

We assume also that the county board of equalization met on the second Monday in July, as required by Section 138.010, RSMo 1949. If it has adjourned so that it cannot correct the errors of the assessor, if such they were, nothing can be done because to allow the assessor to make out a new set of books at this time would deprive the taxpayer of the right to appeal to that board, which is a valuable legal right. On the other hand, if the board is still in session, it has until September 1 to correct and adjust the assessor's book (Sec. 137.290, RSMo 1949.)

CONCLUSION

It is the opinion of this office that after the township assessor has delivered the assessor's book to the county clerk he may not repossess himself of it in order to correct erroneous valuations of property and that such errors in valuation may be corrected only by the county board of equalization.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. Inglish.

Yours very truly,

JOHN M. DALTON
Attorney General

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