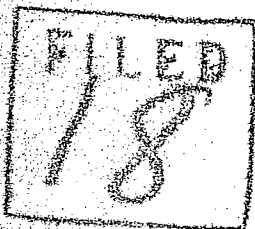


ASSESSOR:
TAXATION:

A county assessor may use as a basis for assessing property for the current year the valuation fixed and determined for the preceding year, if, in his opinion, said valuation reflects a true value for tax purposes. Further, the assessor is required to notify, either in person or by mail, the owner of real estate which is by the action of the assessor assessed at a higher value than the value returned in the taxpayers list.



February 23, 1957

Honorable Arthur B. Cohn
Prosecuting Attorney
Pulaski County
Waynesville, Missouri

Dear Sir:

Reference is made to your request for an opinion of this office, which request reads as follows:

"I would very much like to have an opinion from your office, in regard to the following question:

"The Assessor of Pulaski County, Missouri, did not raise the valuation of real estate in Pulaski County, Missouri last year. The State Tax Commission raised the valuation fifty percent. The Assessor of this County, would like to know if he can make the valuation for the ensuing year, on the basis of this fifty percent raise by the State Tax Commission.

"Under the law he is obliged to notify in writing or in person, each time he raises a taxpayer's valuation on his property, unless there is a transfer of the property itself. Under the law, if he makes the valuation of the property in Pulaski County, the same as the State Tax Commission, which raised it fifty percent, then does he have to notify each taxpayer either in writing or personally of this valuation raise?"

You first inquire whether the assessor can adopt as a basis for assessing the real property in the county for the current year, the valuation fixed and determined by the State Tax Commission for the preceding year.

Honorable Arthur B. Cohn

In order that the conclusion herein reached may be made more readily apparent, and to dispel any misunderstanding as to the duties of the State Tax Commission in regard to the action referred to, we wish to review briefly the duties of the State Tax Commission.

Section 138.390 RSMo 1949, provides that between the dates of June 30th and the second Monday in July of each year, the State Tax Commission shall proceed to equalize the real and tangible personal property among the several counties in the state by adding to or deducting from the valuation of each class of property, such per cent as will tend to equalize the valuation of property throughout the state. Thus it is seen that the State Tax Commission is not, in performing their intercounty equalization function dealing with the valuation of individual pieces of property, but is dealing only in aggregate valuations of the several classes of property within the county. In other words, the State Tax Commission fixes and determines only the total valuation of the class of property within a county rather than the valuations of individual tracts. After such aggregate valuation is determined by the State Tax Commission, the secretary of said commission is required to transmit to the county clerk a report showing the per cent added to or deducted from the valuation of each class of property in the county, together with the aggregate value of the real and tangible personal property in the county, as fixed and determined by the commission. Such report is to be delivered to the county clerk so that it may be in the hands of the county board of equalization on or before the second Monday in July. See Section 138.140 RSMo 1949. The method of effecting a compliance with said order is left to the determination of the proper county officials.

The above-noted duties of the State Tax Commission are but a part of the statutory scheme of assessing and equalizing property valuations for each year. Whereas, it is the duty of the State Tax Commission to effect intercounty equalization, such function is entirely separate and apart from the duties of the county assessor. Section 137.115 RSMo 1949, provides that between the first day of January and the first day of June of each year the assessor shall proceed to assess all the real and tangible personal property in his county at its true value in money. The appellate courts of this state have held that the term "value", as contained in Section 137.115 RSMo 1949, means the assessor's estimate of valuation. *Bank of Carthage v. Thomas*, 48 SW2d 930, *State v. Bethards*, 9 SW2d 603.

As previously noted from Section 137.115 RSMo 1949, and also from Section 137.080 RSMo 1949, the assessor is required to make an annual assessment. Each annual assessment is the basis for that year's

Honorable Arthur E. Cohn

taxes, and is separate and apart from every other year's assessment.

In view of the fact that the assessor is required to perform his duties annually, we fail to see how any action taken in regard to the preceding year's assessment, either by state or county officials, would have any direct bearing upon the current year's assessment. Therefore, in our opinion, the question is not whether the county assessor can make the valuations for the ensuing year on the basis of valuations brought about by an increase ordered by the State Tax Commission in a preceding year, but rather whether the assessor in his opinion feels that the valuation, as finally fixed and determined for the preceding year, presently reflects true value for the purpose of the current year's assessment.

Secondly, you inquire whether the assessor is required to notify each taxpayer, either in person or by mail, if the valuation placed upon real property by the assessor is greater than the valuation placed upon said property for tax purposes for the preceding year. We do not believe that the valuation fixed and determined for the preceding year has any bearing on the question as to in what instances the assessor is required to notify a taxpayer of a change in valuation.

Section 137.180 RSMo 1949, relating to the duty of the assessor to notify the owner where the valuation of real property is increased, reads as follows:

"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 landowner shall so state."

In an opinion to John R. Caslavka, Prosecuting Attorney, Dade County, under date of September 6, 1955, this office held that, if the valuation is increased above the figure returned on the assessment list by the taxpayer, the assessor must notify the taxpayer of such increase. In other words, it was held that the term "valuation", as used in Section 137.180 RSMo 1949, referred to the value placed upon said property by the taxpayer in his list. A copy of said opinion is enclosed herewith.

The conclusion reached in the foregoing opinion was the rule prior to the enactment of Section 137.180 RSMo 1949. See the case of *Wymore v. Markway*, 338 Mo. 46, 89 SW2d 9, wherein the court stated:

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"* * * and the present view, as shown by the greater weight of authority, including the banc case of Ford Motor Co. v. Gehner, supra, is that the property owner is entitled to rely upon the assessment being made in accordance with his listed valuation, unless and until he has knowledge or information or is notified to the contrary by the assessing officials. * * *

CONCLUSION

Therefore, in the premises, it is the opinion of this office that a county assessor may use as a basis for assessing property for the current year, the valuation fixed and determined for the preceding year if, in his opinion, said valuation reflects the true valuation for tax purposes.

It is the further opinion of this office that the assessor is required to notify, either in person or by mail, the owner of real estate which is by the action of the assessor assessed at a higher value than the value returned in the taxpayer's list.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

DDG/ld

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