

TAXATION: Authority of State Tax Commission to review and correct original assessments.

September 11, 1945



Honorable Clarence Evans, Chairman
State Tax Commission of Missouri
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter of September 7, 1945, requesting an official opinion of this office, and reading as follows:

"We would be greatly pleased to have your opinion as to authority of the State Tax Commission to lower the assessed value of real estate below what we know its true value to be in money - for the reason that discrimination is proved as between it and other like property, in the same County."

With respect to the question you have proposed, we direct your attention to the following statutes as being those conferring authority upon the State Tax Commission to act in the premises.

Section 11027, R. S. Mo. 1939, reads, in part, 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:

"(1) To have and exercise general supervision over all the assessing officers of

this state, over county boards of equalization and appeal in the performance of their duties, and to take such measures as will secure the enforcement of the provisions of this article, and all the properties of this state liable to assessment for taxation shall be placed upon the assessment rolls and assessed in accordance with the letter and plain provisions of the law.

* * * * *

"(3) To receive all complaints as to property liable to taxation that has not been assessed, or that has been fraudulently or improperly assessed, to investigate the same and to institute such proceedings as will correct the irregularity complained of, if any irregularity be found to exist.

* * * * *

"(6) * * * Said commission shall also have all powers of original assessment of real and personal property now possessed by any assessing officer, subject only to the rights given by the Constitution to the state board of equalization.

"(7) To cause to be placed upon the assessment rolls omitted property which may be discovered to have, for any reason, escaped assessment and taxation, and to correct any errors that may be found on the assessment rolls and to cause the proper entry to be made thereon.

"(8) 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 to such individual, copartnership, company, association or corporation as provided in section 11028.

* * * * *

Section 11028, R. S. Mo. 1939, reads, in part, as follows:

"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 commission, or any member thereof, or any duly authorized agent thereof, as the case may be, shall then and

there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected, or liable to be affected by review of said assessments thus provided for, may appear and be heard at said hearing. In case said commission, or any member or agent thereof who is acting in said review, shall determine that the assessments so reviewed are not made according to law, he or they shall, in a column provided for that purpose, place opposite said property the lawful valuation of the same for assessment. * * * * The action of the commission, or member or agent thereof, when done as provided in this section, shall be final, when approved by the state board of equalization. When any property has been reviewed, assessed and valued by the commission as herein authorized, such property shall not be assessed or valued at a lower figure by the local assessing or equalizing officer for the year the assessment is made."

In construing these statutes with respect to the authority conferred on the State Tax Commission thereunder, the Supreme Court of Missouri, in *Brinkerhoff-Paris Trust & Sav. Co. v. Hill*, 19 S. W. (2d) 746, l. c. 751, said:

"From said sections 12847 and 12848 it appears: The state tax commission is given general supervision over all the assessing officers of the state, with power to enforce its orders; it has all the powers of original assessment; it may receive complaints as to property liable to taxation that has not been assessed, or that has been fraudulently or improperly assessed, and apply the proper corrective measures; it can raise or lower the assessed valuation of real or personal property either in specific instances or by class; and it has authority, on the com-

plaint 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.

"It is no doubt true that the state tax commission was not intended to supplant local assessing officers and boards, but very clearly it is given full and adequate power, not only to supervise, but to review, their work, and where it finds assessments which were not made conformably to law to revise them--and this by inserting where necessary, after a hearing, its own valuations in lieu of those made by the local authorities. * * * "

Parenthetically, we wish to call your attention to the fact that the decision rendered in the above case was reversed on other grounds upon appeal to the Supreme Court of the United States, but that the later opinion written by the Supreme Court of Missouri, in conformity to the mandate of the decision of the United States Supreme Court, contained the following language with respect to the above quoted portion of the original opinion:

" * * * It is unnecessary to consider the powers of the state tax commission. The ruling on that question in our former opinion was not affected by the decision of the United States Supreme Court. That court fully recognized the authority of this court to overrule the case of the Laclede Land & Improvement Co. v. State Tax Commission, 295 Mo. 298, 243 S. W.

887, and to decide that the tax commission was authorized to hear and determine the complaint of plaintiff, subject to the approval of the state board of equalization. * * *

The conforming opinion from which the above quotation was taken is reported in *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 42 S. W. (2d) 23.

From the foregoing, it is apparent that the State Tax Commission has the authority to review all original assessments at any time prior to the delivery of the tax rolls to the proper collecting officers, subject to the right of the State Board of Equalization to review such action.

There may be some question in your mind as to whether discrimination in the assessment of real property, if shown and proved, is proper grounds for invoking action by the State Tax Commission. This question was referred to in the case of *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 19 S. W. (2d) 746, l. c. 752, wherein the court said:

" * * * Had appellant made timely complaint to the state tax commission, the commission and the state board of equalization, to which it renders an auxiliary service, would, it must be presumed, have at once corrected the alleged discrimination in the assessments, * * * ."

Further, that discrimination is also grounds for intervention by a court of equity was declared in *Jefferson City Bridge & Transit Co. v. A. E. Blaser*, 318 Mo. 373, l. c. 386, wherein the court said:

"However, the bill does allege that the State Tax Commission refused to levy an assessment in proportion to the value of plaintiff's property, or to assess its property in uniformity with the same class of subjects or property; that the

State Board of Equalization on reviewing such assessment refused to adjust and equalize the same; that both the State Tax Commission and the State Board of Equalization 'illegally, wrongfully and fraudulently' discriminated against plaintiff in imposing a higher assessment against plaintiff's property than was imposed against other taxable property within the State of Missouri; and that the assessed valuation of its property was arbitrarily fixed without reference to the assessed valuation of other property of the same class and kind. In ruling defendant's demurrer we must take the allegations of plaintiff's bill as true. If the persons charged with making this assessment refused to assess plaintiff's property in proportion to its value and in uniformity with all other taxable property in the State they are presumed to have known that such assessment would be in violation of Sections 4 and 3, respectively, of Article X of the Constitution of Missouri, and would result in unlawful discrimination against plaintiff's property. Their action in so refusing entered into the very concoction of the assessment. Their knowledge that an unlawful discrimination against plaintiff would necessarily follow made such action intentional on their part, and therefore fraudulent as to plaintiff. The bill meets the requirement that the fraud must be clearly stated and the constitutive facts set up. (2 Black on Judgments (2 Ed.) 583; Nichols v. Stevens, 123 Mo. l.c. 117.) In such case we do not think a complainant should be denied relief simply because the discrimination, though alleged to be fraudulent, was not systematic, habitual and against a large class of individuals or corporations. We hold that plaintiff's bill stated a cause of action."

September 11, 1945

In your letter of inquiry you have specifically referred to a situation in which the real property of a taxpayer has not been overvalued, but rather has been assessed at its true value, while other real property has been undervalued. In the premises, it is necessary to determine whether such valuation constitutes "discrimination," in violation of the Federal and Missouri Constitutions, and, if so determined, whether relief may be afforded the taxpayer by reducing such valuation to that proportion of its true value as other property in the same class.

First, as to applicable constitutional provisions, Section 1, Amendment XIV of the Federal Constitution reads, in part, as follows:

" * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Section 30 of Article II of the Constitution of Missouri of 1875 reads as follows:

"That no person shall be deprived of life, liberty or property without due process of law."

Section 10 of Article I of the Constitution of Missouri of 1945 reads as follows:

"That no person shall be deprived of life, liberty or property without due process of law."

Sections 3 and 4 of Article X of the Constitution of Missouri of 1875 read, in part, as follows:

"Section 3. Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws."

"Section 4. All property subject to taxation shall be taxed in proportion to its value: * * *"

Sections 3 and 4 of Article X, Constitution of Missouri of 1945 read, in part, as follows:

"Section 3. Taxes may be levied and collected for public purposes only, and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. All taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed. Except as otherwise provided in this Constitution, the methods of determining the value of property for taxation shall be fixed by law."

"Section 4. All taxable property shall be classified for tax purposes as follows:
Class 1, real property; * * *

"Property in Classes 1 * * * shall be assessed for tax purposes at its value or such percentage of its value as may be fixed by law for each class * * *."

From the above, it appears that although the Missouri cases cited hereinafter were decided under the Constitution of 1875, the reasoning therein contained remains presently applicable in the light of the retention of similar provisions in the Constitution of 1945.

There is also one statute to which we believe attention should be directed, as it might be contended that the taxpayer cannot obtain relief by way of reduction of valuation placed upon his real property, as to do so would violate such statute. We refer to Section 10981, R. S. Mo. 1939, reading, in part, as follows:

"The assessor shall value and assess all the property on the assessor's books according to its true value in money at the time of the assessment; and all other personal property shall be valued at the cash price of such property at the time and place of listing the same for taxation.
* * * "

Adverting to the principal question, we believe that discrimination in assessments is violative of the quoted portion of the Federal Constitution. It was so declared by the United States Supreme Court in *Sioux City Bridge v. Dakota County*, 260 U. S. 1. c. 445, 43 S. Ct. 190, 67 L. Ed. 340, 28 A. L. R. 979. We quote therefrom:

" * * * 'The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. * * * "

That assessment of the property of one taxpayer at its true value, while all other property of the same class has been assessed at a lower valuation, constitutes discrimination, is further declared in the same opinion, where the following language is found:

" * * * This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. * * * "

We think the last quoted portion of the opinion also effectively answers any contention that such reduction in valuation cannot be made, in the light of the provisions of Section 10981, R. S. Mo. 1939, quoted supra.

The Supreme Court of Missouri, in *Boonville Nat. Bank v. Schlotzhauer*, 298 S. W. 732, specifically recognized and adopted the reasoning contained in the United States Supreme Court decision cited above, saying, l. c. 739:

"We most heartily concur in these views as to the relief to be granted, as we do in the rule that equity will grant relief under the facts given. The rule applies not only to the federal Constitution (Fourteenth Amendment) but to the uniformity constitutional and statutory provisions of the several states. * * * "

It therefrom appears that it has become settled law that assessment of property of a single taxpayer in a particular class does constitute "discrimination," and is in violation of the due process clauses of both the Federal and Missouri Constitutions, and is further violative of the equality of taxation clause of the Missouri Constitution.

Under the various decisions quoted earlier in this opinion construing the powers of the State Tax Commission, it is seen that such commission has been specifically authorized to

require all assessments made to conform to law. Such being the case, we believe that upon a proper showing of facts justifying the exercise of such authority, the State Tax Commission is authorized to act. That such relief may be afforded a taxpayer by the State Tax Commission is pointedly indicated in *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 19 S. W. (2d) 746, l. c. 751, wherein the Supreme Court of Missouri said:

"Appellant's grievance is, not that its property was overvalued, but that it was discriminated against through the undervaluation, and omission in part, of other property subject to taxation. Had it, at any time before the tax books were delivered to the collector, filed complaint with the state tax commission, that body, in the proper exercise of its jurisdiction, would have granted a hearing, and would have heard evidence with respect to the valuations complained of, and, if the charges contained in the complaint had been found to be true, the valuations placed on its property would have been lowered, or that on other property raised, the property omitted from the assessment roll would have been placed thereon, and the discrimination complained of thereby removed. The remedy provided by statute is adequate, certain, and complete."

From the language used, it seems apparent that the State Tax Commission may afford such relief as the facts may require or permit.

CONCLUSION

In the premises, we are of the opinion that the State Tax Commission has authority to review and correct original assessments of real and personal property, either by classes or specific items, at any time prior to the delivery of the tax rolls to the proper officers for the collection of the taxes, subject to the approval of the State Board of Equalization of such action so taken.

Further, we are of the opinion that upon a proper showing of facts disclosing discrimination in the valuation of a specific item of real property, the State Tax Commission may lower such valuation to conform with valuations placed upon the same class of property owned by other taxpayers, even though such original assessment may have been at the true valuation of such specific item of real property.

Respectfully submitted,

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APPROVED:

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