

TAXATION AND REVENUE: The taxpayer can complain to the State Tax Commission when his proper appeal from the county assessor to the county board of equalization has been denied for the reason he had not introduced evidence in support of the affidavit for appeal.

June 6, 1941

Nangle and Bush
Suite 1600 Dierks Building
Kansas City, Missouri

Attention: Mr. Hilary A. Bush
County Counselor

Gentlemen:

We are in receipt of your request for an opinion from this department which reads as follows:

"The County Court of Jackson County has asked me to request your opinion on the following matter, to-wit:

"Numerous taxpayers of Jackson County have appealed from the action of the County Board of Equalization, to the State Tax Commission. The question has arisen as to their right to appeal without first exhausting their remedies before the County Board of Equalization by prosecuting their appeal to said County Board. The Jackson County Board of Equalization meets to hear appeals pursuant to Section 11381, Revised Statutes of Missouri, 1939, on the fourth Monday in March. During the meeting of the County Board numerous taxpayers filed appeals from the Assessor's figures to said County Board in proper form. Due to the great number of appellants, the County Board was unable to hear them on the exact day and hour when such appeals were filed. The County Clerk, acting as Secretary of the Board, accepted the filing of the appeals and advised them to return at a later



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date for their hearing. Some of these appellants failed to return for the hearing and at the adjournment date of the County Board of Appeals, its minutes were made to show that, 'No person appearing the appeal is hereby denied.'

"We would like to attack the jurisdiction of the State Tax Commission to hear any appeals pending before it where the appellant to the County Board failed to appear and give evidence concerning his appeal.

"The recent case of State v. Gardner, 148 S. W. 2d, 780, sets out the steps necessary before an appeal may be heard by the State Tax Commission, and one of the steps therein included is a hearing before the County Board. To hold that merely filing a written document with the Secretary of the Board and then failing to pursue that remedy to an actual hearing before the Board, does not in our minds constitute a legal hearing before the County Board. It is our opinion that when the taxpayer failed to prosecute his appeal to the County Board to an actual hearing, he abandoned that appeal, and having failed to perfect an appeal to the County Board he is now disqualified from appealing to the State Tax Commission."

By the above request you conceded the fact that the numerous taxpayers filed their appeals from the assessor's figures to the county board of equalization in proper form. In view of that statement, I am presuming that the appeals were made in proper time and in proper manner. Briefly, your request is to the effect that whether or not the taxpayer must appear before the county board of equalization and prosecute his claim by way of evidence.

Section 10992, R. S. Missouri 1939, reads as follows:

"Every person who thinks himself ag-

grieved 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."

We find nothing in this section that makes it mandatory upon the taxpayer to introduce any evidence other than the appeal in writing, verified by affidavit and containing the grounds of the appeal and the matter or thing complained of. In fact this section specifically states, "* * no other matter shall be considered by the board." In other words, the filing of the affidavit of appeal is all that is necessary for the county board of equalization to arrive at a proper assessment of the property set out in the affidavit.

In your request you have cited the case of State v. Gardner, 148 S. W. (2d) 780. This case, in paragraph 5 of the opinion, specifically states:

"This court en banc held in Brinkerhoff-Faris Trust & Savings Co. v. Hill, 323 Mo. 180, 193, 194, 19 S. W. 2d 746, 751 (8,9) which has been followed in at least seven recent decisions, that a taxpayer, who claims his property has been fraudulently assessed, must exhaust his remedy under these statutes before he can resort to equity; and that 'the remedy provided by statute is adequate, certain, and complete.' This decision further holds that to obtain relief from the State Tax Commission the taxpayer must file his complaint before the tax books have been delivered to the tax collector. The petition in the instant case nowhere alleges any attempt on appellant's part to complain to the Tax Commission; nor is it shown that there was time to do so after he filed his appeal with

the county board of equalization."

Under the above quotation all that is necessary for the taxpayer to do is to file his complaint before the tax books have been delivered to the tax collector. There is nothing stated therein about evidence being presented before the county board of equalization. Under the holding in this case and in other cases the taxpayer has exhausted his statutory remedy and therefore may file his complaint upon an adverse decision of the county board of equalization in the office of the State Tax Commission.

In the case of Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 19 S. W. (2d) 746, par. 9, the court stated:

"* * * * 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, and the state, county, and the road and school districts would have received punctually, and without abatement, the revenue accruing to each of them respectively under the law. It was clearly guilty of laches in not so doing.

"We do not recede from any of the positions taken in the Schlotzhauer Case; we merely supplement its holdings by the further holding that a taxpayer, who is aggrieved by a fraudulent assessment of his property, is not entitled to relief in a court of equity until he has first exhausted the remedies afforded by the statute."

The only holding in the case of State v. Gardner, 148 S. W. (2d) 780, and in the case of Brinkerhoff-Faris Trust & Savings Co. v. Hill, 323 Mo. 180, 19 S. W. (2d) 746, is to the effect that an equitable proceeding could not be had against an assessor where the plaintiff had

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not exhausted his remedy at law.

You have conceded in your request that the taxpayers have filed their affidavits for appeal in proper form but you object to the fact that the taxpayers did not introduce evidence in support of their affidavits of appeal from the county assessor. Since the taxpayers did not return to introduce any evidence in behalf of his affidavits of appeal from the county assessor, the county board of equalization marked the pleading to show "No person appearing, the appeal is hereby denied." There is no question but that on a default judgment of any kind an appeal can be made in a proper manner and proper time.

Section 11004, R. S. Missouri 1939, reads as follows:

"The said board shall hear and determine all appeals made from the valuation of property made by the assessor in a summary way, and shall correct and adjust the assessment accordingly. The county clerk shall keep an accurate record of the proceedings and orders of the board, and the assessor shall correct all erroneous assessments, and the clerk shall adjust the tax book according to the orders of said board and the orders of the state board of equalization: Provided, that in adding or deducting such per centum to each tract or parcel of real estate as required by said board, he shall add or deduct in each case any fractional sum of less than fifty cents, so that the value of any separate tract shall contain no fractions of a dollar."

Under the above section the board is authorized to hear and determine all appeals from the assessor in a summary way and we fail to find any statute that requires the taxpayer to do anything other than the filing of the affidavit of appeal in a proper manner as set out in Section 10992, R. S. Missouri 1939.

Section 11027, R. S. Missouri 1939, paragraph 8, reads as follows:

"(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."

Under the above partial section the State Tax Commission has the power to raise or lower the assessed valuation of his real estate or personal property which has been assessed and is on the tax rolls.

Section 11028, R. S. Missouri 1939, partially reads as follows:

"* * * 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

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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. * * * * *

Under the above partial section the complainant, or taxpayer, must file a written complaint covering the property as set out in his appeal which was passed upon by the county board of equalization and state that assessment has not been made in compliance with law.

The holdings in the cases of State v. Garnder, 148 S. W. (2d) 780, and Brinkerhoff-Faris Trust & Savings Co. v. Hill, 323 Mo. 180, 19 S. W. (2d) 746, were so decided for the reason that said suits were suits in equity by way of an injunction and the injunction was refused for the reason that the plaintiffs had an adequate remedy at law, that is, an appeal from the return of the assessor to the county board of equalization.

The filing of the written complaint with the State Tax Commission should not be considered as an appeal from the county board of equalization, but if made in the proper time it could be considered as an original petition of complaint. According to your request, the persons mentioned in your letter have complied with all of the law in regard to appeal from the return of the county assessor and the county board of equalization has passed upon that appeal by marking the record as "No person appearing, the appeal is hereby denied. This being the case, the two cases above mentioned, one of which is set out in your request, is not in point.

CONCLUSION

In view of the above authorities it is the opinion of this department that a taxpayer who filed a proper affidavit of appeal in the proper time on an appeal from a valuation of property set by an assessor has exhausted his remedy at law when the same is received by the county board of equalization sitting as the body of appeals at the proper time.

It is further the opinion of this department that it is not necessary for the taxpayer to introduce any evidence

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whatsoever except filing of the affidavit which sets out the reason why he asks that his assessment be equalized.

It is further the opinion of this department that when the county board of equalization receives an affidavit of appeal from the county assessor and marks the same, "No person appearing, the appeal is denied," that the next step for the taxpayer is to file a complaint before the State Tax Commission as set out in Section 11028, supra.

Respectfully submitted

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APPROVED:

VANE C. THURLO
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