Board of County Commissioners—Refund of Taxes Paid Under Protest—Erroneous Classification of Land—Failure of Land Owner to Apply to County Commissioners Sitting as a Board of Equalization.

The Board of County Commissioners can, at any time prior to its adjournment as a Board of Equalization, reclassify lands that have been erroneously classified, but it has no power or authority to do so after adjournment as a Board of Equalization so as to change the assessment for that year.

Taxes paid upon land erroneously classified, where no application was made to the Board of Equalization for a change in the classification, are not illegally or erroneously collected within the meaning of Section 2669 of the Revised Codes of 1907, and the County Commissioners may not refund any excess taxes collected by virtue of an incorrect classification.

R. E. Patch, Esq.,
Chairman Board of County Commissioners,
Poplar, Montana.

My dear Mr. Patch:

You have asked my opinion as to whether, in cases where farmers failed to file a protest as to the classification of their lands, but later paid the taxes under protest and requested the Board to reclassify their lands correctly and refund the difference between the taxes paid and the amount the taxes would have been had the land been correctly classified, the Board of County Commissioners is now authorized to reclassify such lands, if the classification be found to be incorrect, and refund the difference in taxes.

The law providing for the classification of land is found in Chapter 239 of the 1921 Laws. Section 1 provides for the classification of lands under the direction of the State Board of Equalization "for the purpose of securing an equitable and uniform basis of assessment of said lands for taxable purposes."

Section 6 of this Chapter likewise states the purpose of the classification as follows:

> "The Classification herein provided shall be full, complete and accurate, and shall be used as the basis upon which land values shall be fixed for purpose of assessment and taxation."

Sections 7 and 8 of this Act are as follows:

> "Section 7. It shall be the duty of the County Assessor to assess all lands for taxation purposes in accordance with the classification, as made by the Board of County Commissioners."

"Section 8. It shall be the duty of the Board of County Commissioners to cause to be mailed by registered mail, return card requested to each owner a notice of the classification of the land owned by him. If the owner of any land is dissatisfied with the classification of his land, the Board of County Commissioners shall make such investigation as they deem necessary to determine the true and correct classification of such land and when so determined, the same shall be classified in the manner ordered by the Board of Commissioners."

Under the laws of this State, it is made the duty of the Assessor to assess all property at some time between the first Monday of March and the second Monday of July in each year. (Sec. 2510, Revised Codes of 1907.)

It would appear, therefore, that reading Section 2510 in connection with Section 7 of Chapter 239, supra, the Legislature intended that the classification of lands must have been made prior to the second Monday of July, for the reason that the Assessor under Section 7 must assess the lands for taxation purposes in accordance with the classification.

Under Section 2513, Revised Codes of 1907, it is made the duty of the Assessor, after filling out a statement of the property owned by any person, to deliver, either in person or by mail, a copy of the statement to the property owner.

Under Section 2515, Revised Codes of 1907, it is provided that if any person neglects or refuses to furnish a statement, the Assessor must note the refusal on the assessment book and must make an estimate of the value of the property, and the value so fixed by the Assessor must not be reduced by the Board of County Commissioners.

It is the duty of the Assessor to complete his assessment book on or before the second Monday in July. (Sec. 2545, Rev. Codes of 1907.) The book is then delivered to the County Clerk, who must immediately give notice thereof, and of the time the Board of Commissioners will meet to equalize assessments, by publication in a newspaper, if any is printed in the county, and if none is printed in the county, then in such manner as the Board may direct. (Sec. 2547, Rev. Codes of 1907.)

The purpose of the notice mentioned in Sections 2513 and 2547 is to advise the property owner of the amount of his assessment and give him the opportunity to appear before the Board of Equalization and have the assessment reduced, if he deems it too high. The presumption is that the Assessor has done his duty in this regard and that the notice required was given.

The assessment made by the Assessor is final unless changed by the Board of Equalization. (See Clunie v. Siebe, 44 Pac. 1064.)

The County Board of Equalization meets on the third Monday of July in each year and continues in session until the business is disposed of, but not later than the second Monday in August. (Sec. 2572, Rev. Codes of 1907.)

Reading all of the provisions of the statute relating to the assessment of property and the classification of lands for the purpose of furnishing a basis of assessment together, it is apparent that the Legislature intended that the classification of the land should be completed prior to the second Monday in July, with the right, however, in the Board of County Commissioners to change the classification under Section 8 of Chapter 239 of the 1921 Laws.

I do not believe, however, that the Legislature intended that a land owner could have the classification of his land changed by the County Commissioners so as to change the assessment thereof after the adjournment of the County Board of Equalization. The powers of the Board of Equalization to change assessments cease upon expiration of the time specified in the statute as the limit of time during which it may remain in session.

In Matador Land & Cattle Co. v. County of Custer, 28 Mont. 286, 287, the following language was used:

> "On August 8th the board could not have given the plaintiff the ten days' notice required by Section 3789 of the Political Code, as its functions as a board of equalization expired on the second Monday of August, which was on the 10th of the month. Section 3780 of the Political Code reads as follows: 'The board of county commissioners is the county board of equalization and must meet on the third Monday of July in each year, to examine the assessment book and equalize the assessment of property in the county. It must continue in session for that purpose from time to time until the business of equalization is disposed of, but not later than the second Monday in August.' While boards of equalization are provided for in the constitution, their periods of life are prescribed by the legislature, and they cannot hold for any other or longer period than the legislature has fixed. So, when the board of equalization of Custer county adjourned on the second Monday of August, 1896, its term of existence for that year absolutely expired. (State v. Central Pacific Railroad Co., 21 Nev. 270, 30 Pac. 693; State ex rel. Evans v. McGinnis, 34 Ind. 452; Yocum v. First National Bank, 144 Ind. 272, 43 N. E. 231.)"

See also:

> Barrett v. Shannon, 19 Mont. 397;
> Napa Savings Bank v. Napa County, 120 Pac. 449;
> 37 Cyc. 1095, 1096, note 86.

This office in an opinion rendered July 26, 1921, to the County Commissioners of Sheridan County, held that the failure on the part of a land owner to file the protest mentioned in Section 8 of Chapter 239 of the 1921 Laws does not prevent the Board from reclassifying land found to be incorrectly classified. The following language was used:

"However, the ultimate purpose of the statute and the result to be attained is a correct classification of the land. Any incorrect classification must result in unequal burdens of taxation, and consequently in injustice. The statute above quoted certainly did not intend to lay down so harsh and arbitrary a rule as that a classification once made, and not immediately contested by the farmer owning the property, should stand perpetually no matter how great the error in assessment resulting or the inequality and injustice in the burden of taxes borne by him. Suppose that the registered notice referred to in the section quoted was delivered to a farmer in some distant State where, because of difficulties from drought or other causes, he had gone to procure employment. He could not reasonably be required to leave his work, return to Montana, and be present at the first meeting of the Board of Equalization under penalty of having his property perpetually wrongly assessed. Moreover, from the mere notice, and until perhaps after extended inquiry involving a considerable time a farmer could not know whether the classification placed upon his property corresponded to the classification of similar property elsewhere and whether the same was correct.

"The statute provides for investigation and reclassification upon protest by the owner, and while it might seem from the fact that this provision follows immediately the provision for sending out notices of classification, that it was intended that protest must be made at once by the land owner, this conclusion does not necessarily follow, and that construction will therefore be placed upon the section that will, without apparently harming any one, doing violence to the statute, or interfering with its administration, permit the fairest result to be attained, namely, a correct and equitable classification and assessment."

That opinion was intended to permit reclassification to be made despite the fact that protest was not immediately made in response to the notice provided to be sent by registered mail, but it was not intended to hold that the classification could be changed at any time after the adjournment of the County Board of Equalization so as to change the assessment already made. A change in the classification of lands necessarily has for its aim and object the change in the assessment upon the land, and I believe the County Commissioners could at any time, prior to their adjournment as a Board of Equalization, effect a reclassification of any land improperly classified, but that it has no power or authority to do so after adjournment as a Board of Equalization so as to change the assessment for the year 1921.

Section 2669 of the Revised Codes of 1907 empowers the Board of County Commissioners to refund any tax paid more than once or erroneously or illegally collected.

I do not believe, however, that the tax paid under the circumstances involved would be considered a tax erroneously or illegally collected. That section, in my opinion, was intended to cover a case where the tax was illegal or erroneous by reason of a want of jurisdiction in the officer making the assessment, and was not intended to cover a case involving an error of judgment merely on the part of the officer making the assessment.

The general rule governing the refunding of taxes illegally collected is stated in 37 Cyc. 1172 as follows:

> "To take advantage of a statute authorizing the refund of taxes illegally or wrongfully assessed, it must be shown that the tax was illegal, that the assessors acted without jurisdiction, that the property should not have been assessed at all, or that the taxes claimed were not justly due; it is not sufficient to show mere irregularities or errors of judgment in the assessment or in the mode of making it, or that the valuation of the property was excessive or was increased without authority. But where an assessment is made on property which has no existence in fact, the error is one which may justify a refund of the taxes paid."

To the same effect is Clay County v. Brown Lumber Co., 119 S. W. 251, where the Supreme Court of Arkansas said:

> "It is urged by the appellee that an excessive valuation of property is an erroneous assessment thereof within the meaning of section 7180 of Kirby's Digest, so that a remedy is here given to one, who has paid taxes under these circumstances, by having taxes refunded; but we do not think that the term 'erroneously assessed,' as used in said section, refers to an over-valuation of the property. The term 'erroneous assessment,' as there used, refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the assessing officers in fixing the amount of the valuation of the property. If the property paid on was exempt from taxation, or if the property was not located in the county, or if the tax was invalid, or if there was any clear excess of power granted, so as to make the assessment beyond the jurisdiction of the assessing officer or board, then the provisions of Kirby's Dig. sec. 7180, give the owner a remedy for a refunding of such taxes thus erroneously paid; but a remedy is not given by this section to the party aggrieved by reason only of an excessive assessment or overvaluation of his property."

The Idaho statute allows the refunding of a tax when the assessment on the property "was so grossly overestimated that the same was a mistake."

The Supreme Court of Idaho construed the section of the statute in the case of Bengoechea v. Elmore County, 130 Pac. 459. In that case property actually worth $17,000 was assessed at a valuation of $29,580. The court held this was not so grossly overestimated as to justify a refund within the meaning of the statute. The court said:

> "Now, while it is admitted that this is a high, and perhaps an over assessment, still there is no fact disclosed which would bring the case within the provisions of this statute, or would raise the inference that any mistake had been made such as is contemplated by the statute and could be characterized as a 'gross overestimate.' We presume that hundreds of cases of this character, and differing only in degree, might be found in almost every county in the state; and, if a taxpayer is to recover in a case like this, then there are hundreds, and perhaps thousands, of taxpayers in the state who would be entitled to recover varying amounts on account of overestimates as to the value of their property. The statute certainly never meant to cover such a case. The Legislature has provided that the taxpayer, who is dissatisfied with the valuation placed upon his property, must apply to the board of equalization, and that he may then and there have a hearing. Section 1695, Rev. Codes, as amended by extraordinary session of 1912 (Laws 1912, c. 8), provides that no reduction in valuation shall be made to any taxpayer, 'unless such person or agent making application attends and answers all questions pertinent to the inquiry.' This application must be made at the regular session of the board of equalization. It has been the uniform policy of the Legislature of this state to limit changes and alterations in assessed value of property to specified times and a special body, namely, before the board of equalization at its regular session held for that purpose. The Legislature has declined to provide for any appeal to be taken from an order of the board of equalization in equalizing taxes. It is therefore clear to us that the Legislature, in adopting section 1791, did not mean or intend to provide another method whereby the taxpayer, after assessments have been made and equalization had and taxes have been paid, may present his bill to the board and collect back a part of those taxes; or, if the board refuses to allow any claim, he may then appeal to the courts and thus tie up the revenues, and, if he gets a judgment, embarrasses the county in the administration of the public affairs.
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> "In this case, the money had been paid into the county treasury and distributed and disbursed to the various funds; part of it having been paid to school districts and the village or city government of Mountain Home. The remedy of the taxpayer was by application to the board of equalization. He had notice of the valuation placed on his property, and the law gave him the right to apply to the board for a reduction

where both sides might have had a hearing.

"It is clear to us that the statute (section 1791) was not intended to cover a case of this kind."

It is, therefore, my opinion that your Board may not, after adjournment as a board of equalization, change the classification of lands, found to be incorrectly classified, so as to change the assessment for that year, and may not refund any excess taxes collected by virtue of such incorrect classification.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.