

State Board of Equalization—County Board of Equalization—Assessment of Property—Taxpayer Aggrieved, May Appeal When.

Sections 2573, 2574, 2575 and 2581 of Revised Codes of 1907, relating to assessment of property and powers of state and county boards of equalization, construed.

July 11th, 1919.

State Board of Equalization,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of this date asking that I advise your board as to the powers and duties of County Boards of Equalization under Sections 2573, 2574, 2575 and 2581, Revised Codes 1907, and also requesting that I advise you whether or not a taxpayer aggrieved at the action of a county assessor in assessing his property can appeal to the State Board of Equalization unless he shall have first appealed to the County Board of Equalization.

Section 2573 (Sec. 3781 Pol. Code 1895) grants to the County Board of Equalization the power, after giving notice in such manner as it may by rule prescribe, to increase or lower any assessment contained in the assessment book, so as to equalize the assessment of the property contained therein, and make the assessment conform to the true value of such property in money.

Section 2581 (Sec. 3789 Pol. Code 1895) authorizes the county board to direct the assessor to assess any taxable property that has escaped assessment, or to add to the amount, number or quantity of property when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time cancelling previous entries) when any assessment made by the assessor is deemed by the board to be so incomplete as to render doubtful the collection of the tax, but before any such action is taken by the board the clerk must notify the persons interested, by letter deposited in the postoffice, postpaid, and addressed to the persons interested, at least ten days before action is to be taken, of the day fixed when the matter will be investigated.

At first blush it would appear that these two sections refer to and cover the same subject, but examining them carefully it will be seen that each refers to a different subject. Section 2573 only attempts to grant to the county board such power as will enable it to equalize the assessment of all property which has been assessed and the assessment entered on the tax rolls in order that the assessments may be equalized and all property assessed will be assessed at its true value in money. That is, if property has been assessed by the county assessor and the assessment entered on the tax rolls, the board may, if it finds that any of such property has been assessed either too high or too low, proceed under said section to equalize all assessments by either increasing or decreasing the value of such property in order that all assessments appearing on the tax rolls will be equal and all such property assessed at its true value in money. Section 2581, however, grants the board power for an entirely different purpose. The

power granted by this section is not to increase or decrease any assessment of property, which has been assessed and entered on the tax rolls by the county assessor, in order to equalize assessments and require all such property to be assessed at its true value in money, but to procure the assessment of property which has not been assessed by the county assessor, to add to the amount, number or quantity of property when a false or incomplete list has been rendered, or to enter a new assessment when the board deems the assessment made by the county assessor so incomplete as to render doubtful the collection of the tax.

If the property has not been returned for assessment and taxation and has not been assessed by the county assessor the county board cannot proceed under Section 2573, because the property does not appear on the tax rolls, consequently there is no assessment to increase or decrease, but must proceed under Section 2581. So if a false or incomplete list has been rendered, which does not contain all of the property and the value thereof the board cannot proceed under Section 2573 as any action taken by the board requires, in addition to the increasing of the assessment, the adding of property thereto, but in such a case the board must proceed under Section 2581. So in the case of an assessment made by the board where the board deems the assessment made by the county assessor so incomplete as to render doubtful the collection of the tax, the board cannot proceed under Section 2573 as the action of the board involves the making of an entirely new assessment, not merely increasing or decreasing the assessment. On the other hand if all of the property owned by the taxpayer has been assessed by the county assessor and entered on the tax rolls and the only question to be determined is whether the valuation placed thereon by the assessor is too high or too low, then the board cannot proceed under Section 2581, as there is no question of property not being assessed, or of the assessment not being sufficiently complete but the board must proceed under Section 2573 as the only question is whether the assessment made by the assessor is too high or too low when compared with the assessments of all other property.

You are, therefore, advised, with reference to Sections 2573 and 2581 as follows:

When all property owned by the taxpayer has been assessed by the county assessor and entered on the tax rolls, and the only question to be determined by the county board is whether the assessment as it appears on the tax rolls is too high or too low, then the county board should proceed under Section 2573. Under such section the board cannot increase or decrease the assessment until notice has been given to the taxpayer that the board intends to do so. This section does not prescribe any definite period for which notice may be given, but simply provides that notice may be given in such manner as the board may by rule prescribe. A county board, when it first meets, should adopt a rule providing that before any increase or decrease in assessment shall be made by the board under Section 2573, notice shall be given to the taxpayer of such intention, the rule providing the manner in which the notice shall be given and for what length of time.

When the board is of the opinion that any assessment should be either increased or decreased the board should not immediately proceed to make the order increasing or decreasing, but should fix a time when the board will consider the matter and the taxpayer should be given notice of such time in accordance with the rule adopted by the board. At such time, after hearing and investigation, if the board determines that the assessment should be either increased or decreased, it should make an appropriate order either increasing or decreasing the assessment, and it then becomes the duty of the clerk to change the assessment to conform to the order of the board. It should be clearly understood, first, that the board, when proceeding under Section 2573 does not in the first instance, make an order increasing or decreasing the assessment, but merely makes an order fixing a time for considering the same, and that the order increasing or decreasing the assessment is not made until the hearing and investigation has been had at the time fixed; and second, that the board does not order or direct the county assessor to make the increase or decrease, but the board itself orders the increase or decrease made and the county clerk makes the same on the tax rolls, the county assessor having nothing to do with the matter.

If, however, more than the mere increasing or decreasing of an assessment made by the county assessor and entered on the tax rolls, is contemplated, such as assessing property which has not been assessed and entered on the tax rolls by the county assessor, or adding property to an assessment when only a portion of the property belonging to a taxpayer has been assessed by the county assessor and entered on the tax rolls, or the making of a new assessment is necessary by reason of the assessment by the county assessor being so incomplete as to render the collection of the tax uncertain, then the board must proceed under Section 2581. Under this section the board does not, in the first instance, order the assessment, or change in assessment made by the assessor, but simply fixes a time when the board will consider the matter. This section requires that after the board has fixed the time for hearing the matter, notice of at least ten days must be given of such hearing by the clerk by depositing a letter in the postoffice, postpaid, directed to the persons interested. On the day fixed for the hearing, and after the investigation and hearing, the board must make an order directing the county assessor to make the assessment, or to add property to the assessment, or to make a new assessment in place of an incomplete assessment, as the case may be, and it then becomes the duty of the county assessor to make the assessment, or to add property to the assessment or to make a new assessment in conformity with the order of the board. Here, it should be clearly understood, first, that the board when proceeding under Section 2581, does not in the first instance make an order directing the assessor to make an assessment, etc., but merely makes an order fixing the time for considering the same, and that the order directing the assessor to make an assessment, etc., is not made by the board until the hearing and investigation has been had at the time fixed; and, second, that the board does not itself order the assessment made, but the board orders and directs the assessor to make the assessment, etc., and it then becomes the duty of the assessor to do so, the clerk having nothing to do with the matter.

Section 2574 (Sec. 3782 Pol. Code 1895) provides the method to be pursued by a taxpayer who is aggrieved by the valuation placed on his property by the county assessor. This section provides that no reduction shall be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board a written application therefor, verified by his oath, showing the facts upon which it is claimed such reduction should be made. This section must be considered and construed with Section 2573. If the board, in examining the tax rolls, should discover that one piece of property has been valued at a higher valuation than another piece of property of the same class and of the same value, and that the second piece of property has been valued at its true cash value, so that there can be no question but what the first piece of property has been valued in excess of its true cash value, and that in order to equalize assessments the value of the first piece should be decreased, to the same value as the second piece of property, I believe the board has the power, under said Section 2573, to make the proper reduction without the owner, or his agent, being compelled to file an application therefor under Section 2574. But in order to warrant the board in making such a reduction it must clearly appear to the board that such a reduction is necessary in order that assessments should be equal and that such property should not be assessed at a value in excess of its true cash value. However, unless such clearly appears to the board the board has no power to make any reduction in the value of property unless the owner, or his agent, files a verified application in the manner required by Section 2574, and should any person appear before the board asking for a reduction in the value of any property the board should, in every instance, refuse to take any action until an application in proper form has been filed with the board as required by Section 2574.

Section 2575 (Sec. 3783 Pol. Code 1895) must be considered and construed with Section 2574. This section prohibits the board from making any reduction in the value of property, when an application for such reduction has been made under Section 2574, unless the person making such application, or his agent, attends before the board and answers, under oath, all questions pertinent to such application. This simply means that a person cannot merely file an application under Section 2574 in order to give the board power to make the reduction asked, but that in order to give the board power and authority to act on such application and make the reduction requested, the person filing the application must appear before the board and answer under oath all questions pertinent to such inquiry. If a taxpayer merely files an application, and does not appear before the board in person, or by attorney, the board has no power or authority to grant the application and make the reduction.

With reference to a taxpayer, aggrieved at the action of a county assessor in assessing his property, appealing to the State Board of Equalization without having first made application to the County Board of Equalization for a correction of such assessment, I am of the opinion that he cannot do so. The very purpose for which county boards of equalization are created are to equalize assessments, and to that end to hear complaints of taxpayers who consider themselves aggrieved by the assessments and corrections in assessments made by the county assessor as will correct all errors made by the county assessor and secure the equalization of all

assessments in the county. The State Board of Equalization does not act until after all assessments are made by the county assessor and equalized by the county board of equalization, and its action then, except insofar as it assesses property which the Constitution or laws require it to assess, is in the nature of a review of the assessments as equalized and adjusted by the county boards of equalization. Section 2 of Chapter 48, Session Laws 1919, prescribing the powers and duties of the State Board of Equalization, provides for an appeal to the state board by any person, firm or corporation aggrieved by the action of a county board of equalization, provides the manner in which such appeal may be taken, and authorizes the state board of review to modify or affirm any action of the county board complained of. The section contemplates that the matter must have first been presented to the county board before it can be heard by the state board, and then can only be heard by the state board when an appeal to the state board has been taken in the manner specified in such section.

If a taxpayer is aggrieved by an assessment made by the county assessor he must present the matter to the county board, and if dissatisfied with the action taken by the county board he may appeal therefrom to the state board, but he cannot present the matter to the state board and have it review the assessment made by the assessor unless he has presented the matter to the county board and appealed from its action.

Respectfully,

S. C. FORD,

Attorney General.