

Opinion No. 61-93

September 29, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Mr. Jack E. Holmes, Chief Tax Commissioner, State Capitol Building, Santa Fe, New Mexico

QUESTION

QUESTION

May the assessable value of farm machinery and equipment for ad valorem taxation purposes be computed by multiplying the number of irrigated acres owned by a farmer by a factor of \$ 10.00 per irrigated acre?

CONCLUSION

No.

OPINION

ANALYSIS

The answer to the question presented by you is governed by the provisions of Article 8, Section 1, of the New Mexico State Constitution and Sections 72-2-2 and 72-2-3, N.M.S.A., 1953 Compilation. Article 8, Section 1, of the State Constitution specifies that:

"Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class."
(Emphasis added).

Section 72-2-2, N.M.S.A., 1953 Compilation, provides in part that:

"Property, real, personal and intangible **shall be assessed in proportion to its value.**"
(Emphasis added).

In addition, to the above provisions, Section 72-2-3, N.M.S.A., 1953 Compilation, requires the county assessor in each county to fix the value of all property for taxation purposes at "the full actual value thereof." Such requirement necessitates a basing of the assessment on the full actual value of such farm machinery and equipment.

Under the language of the above provisions it is implicit that farm machinery and equipment for ad valorem tax purposes must be assessed in proportion to the full actual

value of the property subject to the tax. The formula described in your question propounded above, standing alone, and absent the the presence of any other factors, clearly fails to take into consideration the amount of such farm machinery and equipment actually owned by a farmer, and fails to consider similarly the actual condition of such property at the time of its assessment.

In arriving at the value of property for tax assessment purposes mathematical formula may lawfully be employed as a factor for determining the ultimate amount of tax due, but the validity of such formula is dependant upon the proper consideration of all relevant factors. As stated in 84 C.J.S., "Taxation" Section 410, at page 785:

"Each case of valuation must be determined according to the conditions existing at the time, and property to be assessed is to be taken and valued in the actual condition in which the owner holds it . . ."

Based on the foregoing, it is therefore our opinion that the formula described in your question set forth above, is violative of the provisions of both Article 8, Section, 1 of the New Mexico State Constitution, and Sections 72-2-2 and 72-2-3, N.M.S.A., 1953 Compilation, in that such formula fails to make any actual correlation with the full real value of such farm machinery and equipment as such property actually existed at the time such assessment was made.

Parentetical to your inquiry it is pointed out by your letter that the use of such formula is long established as a method of assessment followed in one county of this state and such method has been employed in that county in making assessments for the year of 1961. In this respect it is our conclusion that while it is incumbent upon each county assessor, under the provisions of the above quoted constitutional and statutory provisions to assess all such farm machinery and equipment in proportion to its actual value, a mistake by an assessor which does not arbitrarily or fraudulently value such property out of proportion to its real worth, and which error does not result in excessive or discriminatory valuation, does not void the assessment.

It has been held in 84 C.J.S. "Taxation" Section 410 (c), at page 789, that "An assessment will not be held void by reason of an excessive valuation placed on the property by the assessor, where it was the result of an error of judgment on his part and not of dishonesty or want of good faith . . ."

As stated in **Skinner v. New Mexico State Tax Commission**, 66 N.M. 221, 345 P 2d 750, our Court has held that unless there is a showing by a taxpayer of intentional fraudulent assessment of his property, and which assessment is in excess of that which the law provides, such taxpayer has no standing to complain of the assessment. In this case it was held:

"In New Mexico, it has long been the rule that a taxpayer who is not assessed more than the law provides has no cause for complaint in the courts in the absence of some well defined and established scheme of discrimination or some fraudulent action, South

Spring Ranch and Cattle Co. v. State Board of Equalization, 1914, 18 N.M. 531, 139 P. 159; In re Taxes Assessed Against Property of Schoolle, etc, 1938, 42 N.M. 371, 78 P 2d 1116."

It is therefore apparent, that a mere error in judgment, or mistake in computation on the part of an assessor, where there is no showing of an excessive valuation or an established scheme of discrimination or fraud present, such does not void the assessment upon the property of a taxpayer, and in such case it is the duty of a taxpayer dissatisfied with the valuations placed upon his property, to follow the proper statutory or equitable remedies which are afforded to him in order to seek relief from an improper assessment.

As stated in Cooley, "Taxation" Vol. 3, 4th Ed, Section 1143, at page 2296, a person alleging injury by an error in assessment, "Committed without fraud or malice, has in general only such remedy as the statute may afford him . . ." Also, at page 2298, thereof, such authority states: "It is generally held, also that one whose property has not been assessed above its true value, or whatever may be the statutory specifications as to value, cannot claim that his assessment is invalidated because the property of other persons is assessed at less than such value. For the presumption is that those who made the assessment acted not arbitrarily, but according to the best of their information and belief . . ."

Section 72-2-38, N.M.S.A., 1953 Compilation, provides that a taxpayer dissatisfied with the valuation placed upon his property may seek relief from the county board of equalization. This section provides that:

"Any person, firm, or corporation, who may be dissatisfied with the valuations placed upon his/its property by the assessor, shall have the right to appeal to the board of equalization. Any taxpayer so appealing from the action of the assessor, shall either appear in person, or by agent, before the board at a meeting which shall be held on the first Monday in May. The board, beginning the first Monday in May, shall hear any taxpayer so appealing from the action of the assessor. Any person, firm, or corporation dissatisfied with the action of the board in the determination of any appeal to the board from the action of the assessor, shall have the right to appeal to the tax commission and the courts as provided by law."

We have previously held in Attorney General's Opinion No. 6180 1955-56, that unless the taxpayer has first exhausted his administrative remedies, as provided in Section 72-2-38 and 72-2-39 he is foreclosed from having his property reassessed in any manner whatsoever.

Absent, an effort by a taxpayer to first obtain relief from the valuation placed upon such property under the Section set out in full above, and without an attempt to exhaust the administrative remedies available to him, such taxpayer would be precluded from seeking further remedy in the courts. As stated in **First National Bank of Raton v. McBride**, 20 N.M. 381, 149 P. 353, and **Price Shoe and Clothing Company, et al v.**

McBride, 20 N.M. 409, 1949 P 362, a taxpayer alleging discriminatory taxation must first resort to his statutory remedies prior to seeking relief by a court of equity. Failing such action by a taxpayer to pursue his legal or equitable remedies, the assessment may be enforced and collected as assessed in tax year of 1961.

It is important, however, that during any subsequent year, all evaluations or assessments of any farm machinery or equipment should be made by an assessor in accordance with the provisions of Article 8, Section 1, of the State Constitution and Sections 72-2-2 and 72-2-3, N.M.S.A., 1953 Compilation, so as to arrive at a determinative assessment of such property which is in proportion to the actual value of the property to be assessed.