

Opinion No. 69-132

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BY: OPINION OF JAMES A. MALONEY, Attorney General James C. Compton, Jr.,
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TO: Maralyn S. Budke, Director, Legislative Finance Committee, State Capitol, Santa Fe, N.M. 87501

QUESTIONS

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1. When a property owner protests a value that has been set on his property by the State Tax Commission, must the State Tax Commission certify that value to the county assessor pursuant to Section 72-6-4, N.M.S.A., 1953 Compilation, and must the county treasurer bill the property owner for the taxes due on the protested valuation even though the protest has yet to be resolved?
2. If the property owner should be billed for the taxes based on the protested valuation, does interest accrue on the amount of the unpaid tax according to Section 72-7-3, N.M.S.A., 1953 Compilation?
3. If the State Tax Commission is not required to certify the protested values to the county assessor, and if the county treasurer is not required to bill the property owner for the taxes due on the protested valuation, may the county treasurer charge interest on the amount of taxes finally determined to be owing?

CONCLUSIONS

1. Yes.
2. Yes, but see analysis.
3. See analysis.

OPINION

{*213} ANALYSIS

1. After the State Tax Commission determines the valuation of property under Section 72-6-4 (A)(1), N.M.S.A., 1953 Compilation (1969 P.S.), the property owner is entitled to a hearing before the commission to protest this valuation. Section 72-6-4 (D), supra. Before it is able to certify the valuation, the commission must grant such a hearing. Section 72-6-4 (D), supra.

The procedure for protesting the valuation is set forth in detail in Section 72-6-8.2, N.M.S.A., 1953 Compilation. If the property owner is dissatisfied with the outcome of this hearing before the State Tax Commission, he may appeal to the courts under Section 72-6-8.3, N.M.S.A., 1953 Compilation (1969 P.S.). Section 72-6-8.3 (A) and (B), N.M.S.A., 1953 Compilation (1969 P.S.), explicitly provide a procedure under which the property owner must pay the taxes under protest. See **Goodner v. State Tax Comm'n**, 70 N.M. 300, 373 P.2d 540 (1962); **General Tel. Co. of Southwest v. State Tax Comm'n** 69 N.M. 403, 367 P.2d 711 (1962); **State v. First Judicial District Court**, 69 N.M. 295, 366 P.2d 143 (1961). Under this procedure, the court determines what portion of the tax resulting from the protested valuation is actually in dispute. Section 72-6-8.3 (C), supra. The county treasurer holds this portion in a suspense account where it draws interest, subject to the final determination on appeal. Section 72-6-8.3 (D), supra. The other portion, that is the remainder of the tax which is not disputed by the property owner, is to be paid just as any other tax. Section 72-6-4 (B), supra.

Once the State Tax Commission has heard the protest of the property owner, as required under Section 72-6-4 (D), supra, then, the {214} commission is required under Section 72-6-4 (A) (2), supra, to certify the valuation to the appropriate local taxing authorities. The use of the word "shall" in this provision indicates the Legislature's intention that the certification is not discretionary, but is mandatory on the part of the commission once the protest has been heard under Section 72-6-4 (D), supra. The commission's certification is the key to the overall taxation process, since the process does not function until the commission certifies the valuation to the appropriate local taxing authorities. Section 72-6-8.2, supra, which provides for appeal to the courts from the commission's valuation, contains no clear authority for a court to interfere by stay or by injunction with the State Tax Commission's certification of valuation to the local authorities. **State v. First Judicial District Court, supra**. Furthermore, Section 72-6-8.3 (E), supra, specifically provides that an appeal from the hearing before the State Tax Commission shall not stay the usual taxation process of certification to local taxing authorities. When the property owner protests the valuation that has been set on his property, and after the commission's hearing on this protest, therefore, the State Tax Commission must certify that valuation to the local taxing authorities pursuant to Section 72-6-4, supra.

Once the State Tax Commission has certified the valuation, the valuation is final and binding upon all tax officials of the state. Section 72-6-4 (B), supra. Regardless of whether the valuation has been protested and appealed into the courts by the property owner, "Each assessor **shall** place the actual values so certified upon the assessment rolls of his county for the year for which determined, and taxes shall be levied thereon in the same manner as in the case of other property." (Emphasis added.) Section 72-6-4 (B), supra. As a tax official of the state for purposes of collection of the taxes, the county treasurer is under the mandatory duty to levy the taxes on the property under protest, since the Legislature used the word "shall" in this portion of the statute. This reasoning is consistent with the express provision in Section 72-6-8.3 (E), supra, that an appeal shall not delay the usual taxation process of levying taxes. When the property owner protests the valuation that has been set on his property by the State Tax Commission,

and the commission has certified this valuation to the local taxing authorities, therefore, the county treasurer must bill the property owner for the taxes due on the protested valuation even though the protest has yet to be resolved.

2. Section 72-7-3, N.M.S.A., 1953 Compilation, provides that on December first one-half of unpaid taxes becomes delinquent and on the following May first, if not paid, the other one-half of such unpaid taxes becomes delinquent. From the respective dates of delinquency, such unpaid taxes shall bear interest at the rate of one percent per month until they are paid by the property owner. Since the taxes based upon a protested valuation are to be levied in the same manner as any other taxes, Section 72-6-4 (B), supra, interest on these taxes would accrue generally in the same manner as any other delinquent unpaid taxes.

Once the county treasurer has billed the property owner for the taxes due on the protested valuation, the property owner faces several alternatives. He may pay the entire amount of the levied taxes without protesting. If he were to pay according to Section 72-7-3, supra, no taxes would become delinquent and no interest would accrue.

The property owner, on the other hand, may dispute a portion of the overall levy and may pay to the county treasurer only that portion which is not under dispute. If the property owner in paying the undisputed amount has in fact paid at least one-half of the total levy by December first, then no taxes become delinquent {²¹⁵} on that date and no interest would accrue under Section 72-7-3, supra. However, if the property owner in paying the undisputed amount has not in fact paid at least one-half of the total levy by December first, then the difference between the amount actually paid and one-half of the total levy would normally become delinquent on that date and interest would accrue under Section 72-7-3, supra. If the property owner in paying the undisputed amount has in fact paid at least one-half of the total levy by December first but the disputed portion of the levy is still pending final determination on appeal in the courts, then on the following May first he will not have paid the final one-half of the taxes due on the total levy and the difference between the amount actually paid and the remainder due on the total levy would normally become delinquent on May first and interest would accrue under Section 72-7-3, supra.

Under the above circumstances where the disputed portion of the levy would normally become delinquent as an unpaid tax, the property owner may forestall the accrual of interest under Section 72-7-3, supra, only if he complies with Section 72-6-8.3 (C) (1), supra, when he appeals the protested valuation to the courts. This section provides that the disputed amount of the levy "may be paid under protest and held in a suspense account by the county treasurer, . . . pending final determination of the appeal." (Emphasis added.) Although use of the word "may" normally indicates that a proposed course of action is discretionary, the case law dispels such an interpretation in this instance. **Goodner v. State Tax Comm'n, supra; General Tel. Co. of Southwest v. State Tax Comm'n, supra; State v. First Judicial District Court, supra.**

These cases emphasize that an appeal from a protested valuation does not impede the taxation process. Section 72-6-8.3 (E), supra, reiterates this emphasis. Accordingly, the word "may" under the circumstances is used in a directory sense. While the property owner is directed to pay the total levied taxes based on the protested valuation, he is permitted to escape the accrual of delinquency interest under Section 72-7-3, supra, if he pays under protest the disputed amount to the county treasurer to hold in the suspense account pending the outcome of the appeal.

By paying the disputed amount in this manner, the property owner pays the total levy and does not become liable for the delinquency interest on the amount in dispute. On the other hand, if he does not comply with the directive in Section 72-6-8.3 (C) (1), supra, and does not pay under the protest the disputed amount to the county treasurer to hold in the suspense account he has not paid this portion of the levy and delinquency interest will accrue under Section 72-7-3, supra, as outlined above.

3. Since the first two questions have been answered in the affirmative, this question need not be reached. The State Tax Commission is required to certify the protested values to the local taxing authorities. The county treasurer is then required to bill the property owner for the taxes due based upon the protested valuation.