

Opinion No. 18-2120

August 27, 1918

BY: GEORGE C. TAYLOR, Attorney General

TO: Hon. Lee R. York, Attorney at Law, Alamogordo, N.M.

Abatement of Taxes by Action of District Attorney.

OPINION

I am in receipt of your letter of the 16th inst., in which you state:

"A has paid no taxes in five years. His taxes, penalties and interest amount to several thousand dollars. His schedules are not signed for any of the five years, and, of course, are not sworn to. The county records show that he has never appeared before the Board of County Commissioners when sitting as Board of Equalization and requested a correction in his taxes. He now has the district attorney to file a petition with the district court praying that the court appoint a referee to take testimony to ascertain whether or not the said A is entitled to a reduction in his taxes because he did not own as much personal property as the tax rolls and lists show to have been owned by him during the respective years."

Your first inquiry is as follows: "Can the 25 per cent penalties for failure to file a sworn schedule be assessed against him?"

Section 5455, Codification 1915, contains the following provision:

"If any person shall fail to render a true and complete list of his property as hereinbefore in this article required, the assessor shall make such list according to the best information he can obtain, and such person shall be liable to a penalty of twenty-five per cent upon all of the tax levied against all of his property, to be collected the same as any other portion of the taxes."

From the reading of the section referred to, my answer to this question is in the affirmative.

Your next question is as follows:

"Is the District Attorney authorized to file a petition asking the District Court to take testimony to ascertain, or should the District Attorney first decide whether or not there is an injustice and if so file the petition asking the correction?"

Section 5475, Codification 1915, authorizes any tax payer complaining of any injustice, to submit his complaint to the District Attorney. If the District Attorney is satisfied that

correction or change should be made so as to avoid any injustice to the tax payer, it is his duty to submit the matter to the District Court, and ask for an order of the court that change or correction be made. According to the strict construction of the language of the statute, it is a prerequisite to submitting the matter to the court that the District Attorney should be "**satisfied that correction or change should be made.**" It would follow that it would not be necessary to submit proof as to whether or not an injustice had been done. Notwithstanding this, I see no reason why such step could not be taken with propriety for the benefit of the court and as justification of the District Attorney.

Your next question is as follows:

"Do you think the District Attorney is authorized under the Statute to file a petition for the correction in the amount of property owned, where the tax payer has sat around five years and has taken none of the statutory steps to correct the error."

This question presents more perplexing problems to my mind than the other submitted by you.

Section 5437, Codification 1915, makes it the duty of all owners of property subject to taxation to list the same with the assessor.

Section 5455, above referred to, makes it the duty of the assessor to make such list if the owner shall fail to render the same.

Section 5467 requires the assessor to mail a notice to the owners of property, notifying them of the valuation placed upon both real estate and personal property.

Section 5468 constitutes the Board of County Commissioners as a Board of Equalization for the revision, correction, and completion of the assessment rolls.

Section 5, Chapter 54, Laws 1915, makes provisions for the State Tax Commission to hear appeals from the County Board of Equalization.

Section 5483 says that no personal demand shall be necessary, and that it is the duty of every tax payer to call upon the County Treasurer and make payment of his taxes. In the case under consideration the owner of the property for five years has permitted the assessor to list his property as provided by law without objection. The presumption is that the assessor discharged his duty by mailing the notice required by law. The owner of the property took no steps to have his assessment corrected before the County Board of Equalization. He failed to appeal to the State Tax Commission. You do not say whether or not, in the complaint filed, the complainant excuses or seeks to justify his conduct. I am disposed to hold on the side of enforcing the collection of taxes. There is considerable authority justifying the position that conduct of his character amounts to a waiver of the right to object or to ask for a review at this late date. I am not unmindful of the fact that Section 5455 imposes the penalty of twenty-five per cent for failure to list the property, and realize that this may be held to be the extent of punishment or penalty

meted out for failure to list the property, and I would prefer a ruling of the courts to this effect.

Again, I have not overlooked the decision of our Supreme Court in the case of South Springs R. & C Co. vs. State Board of Equalization, 139 ac. 159, in which the court held that the word "injustice" is used in the broadest term that could have been employed, and applies to any over-valuation of the property of the tax payer.

My opinion is that this party is not at this time entitled to relief for which he is asking.