

## Opinion No. 61-21

March 14, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

**TO:** Mr. Kenneth A. Patterson, Assistant District Attorney Second Judicial District, Bernalillo County Court House, Albuquerque, New Mexico

### QUESTION

#### QUESTIONS

1. May the penalty provisions of Section 72-2-13, N.M.S.A., 1953 Compilation still be enforced, or have they been impliedly repealed by Section 72-2-10.3, N.M.S.A., 1953 Compilation?
2. In a county where the unit tax system has been placed in effect, must real property still be declared annually?

#### CONCLUSIONS

1. See Analysis
2. Yes

### OPINION

#### ANALYSIS

Section 72-2-3, N.M.S.A., 1953 Compilation, imposes upon every-one who is the owner or manager of taxable property the duty to make an annual declaration of that property. Section 72-2-10, N.M.S.A., 1953 Compilation (now repealed), required the county assessors to visit all property owners in their counties, and receive their property declarations. Section 72-2-10.1, N.M.S.A., 1953 Compilation (the present law), changed the method of declaration to require the taxpayer to go to the assessor to make his declaration. Section 72-2-10.2, N.M.S.A., 1953 Compilation, requires the county assessor to make, annually, a reasonable and diligent effort to view all taxable property in the county.

With these requirements in mind, let us turn to the two penalty statutes in question to see what acts they penalize. If they penalize the same act, then the last statute in point of time will control, and will impliedly repeal the earlier. **Baca v. Board of County Commissioners of Bernalillo County**, 10 N.M. 438, 62 Pac. 979. Implied repeals are not favored, however, and if both statutes can be read together, and both given effect,

then we must do so. **Alvarez v. Board of Trustees of La Union Townsite**, 62 N.M. 319, 309 P. 2d. 989.

Section 72-2-13 penalizes three things:

1. Wilfully and knowingly making a false declaration; punishable as perjury.
2. Unlawfully seeking to evade, or evading, declaration, or refusal to declare; penalized by increasing the tax 25%.
3. "nonlisted" property, which we take to mean negligently nonlisted; penalized by increasing the tax 5%.

Section 72-2-10.3 penalizes three things:

1. Refusal to make out or assist in making out a list of property.
2. Refusal to make the oath or affirmation required by law.
3. Refusal to permit the assessor to view property.

All these acts are punishable by a fine not exceeding \$ 500.00.

Section 72-2-13 only penalizes breaches of duties imposed by Section 72-2-3. (It does not specifically penalize the oath requirement of Section 72-2-10, and we have seen that Section 72-2-10 is now repealed anyway). Section 72-2-10.1 penalizes refusal to declare, a duty imposed by Sections 72-2-3 and 72-2-10.1, refusal to make oath, a duty imposed by Section 72-2-10.1, and refusal to permit the assessor to view property, a duty implied from the power granted by Section 72-2-10.2.

The only act that both statutes penalize is refusal to make a declaration or list of property. In our opinion, therefore, Section 72-2-10.3 impliedly repeals Section 72-2-13 only insofar as the latter prescribes a penalty for refusal to make a declaration of property. Section 72-2-13 still controls for making a false declaration, wilfully evading declaration, and for negligent failure to list property. Section 72-2-10.3 controls for refusal to declare, refusal to make oath, and refusal to permit the assessor to view property.

In answering your second question, we refer first to Section 72-3-4, N.M.S.A., 1953 Compilation, which provides:

"72-3-4. DECLARATION OF TAXABLE REAL PROPERTY -- DESCRIPTION. --  
Between January 1st and March 1st of the year subsequent to that during which it was determined by the state tax commission, as provided by section 2 of this act (72-3-2), that the unit tax system should be installed in a county, every individual, organization, or corporation required by law to make declaration and schedule of the property owned, or

of which he, or it, has the control or management, shall at the time of making such declaration and schedule also furnish, and the assessor shall cause to be delivered to him a true and complete list of all taxable real property which such individual owns or has the control or management, as it exists on January 1st of that year. The description of said real estate shall be complete, and shall be such as would be sufficient to identify it so that title thereto would pass if so described in a deed, and shall also contain the street address, when available."

From the declarations so made, a permanent real property index is created. See Section 72-3-5, N.M.S.A., 1953 Compilation.

Section 72-3-4 is not, however, the only statute dealing with the declaration of real property. Section 72-2-3, N.M.S.A., 1953 Compilation, provides:

"72-23. LIST OF PROPERTY -- CONTENTS -- VALUATION -- HOW FIXED. -- Every person, firm, association or corporation shall, in each year, make a declaration of all property subject to taxation of which he is the owner or has the control or management, but in no case is he to fix the value of such property, or any portion thereof, except as hereinafter provided; but it shall be the duty of the county assessor to fix the valuation for the purposes of taxation of all property contained in such declaration or of which he may otherwise obtain knowledge, at the full actual value thereof. Such declaration shall be made of all property as it exists on the first day of January of each year, and it shall show all the property belonging to, claimed by, or in the possession or under the control or management of the person making the declaration or of any firm of which he is a member, or of any corporation of which he is an officer, together with a statement of the county in which the property is situated or which it is liable to taxation, and a description of all real estate, such as would be sufficient in a deed to identify it so that title thereto would pass, and a detailed statement of all personal property, including the average value of merchandise for the year ending January 1st; Provided, that all property which (is) to be assessed and valued for the purposes of taxation by the state tax commission need not be declared and returned to the assessor by the owner or owners thereof."

In our opinion these two statutes should be read together. The declaration provided for in Section 72-3-4 is merely for the purpose of establishing the permanent real property index. The annual declaration required by Section 72-2-3 keeps the tax rolls current, appraises the assessor of improvements, and of changes in ownership. Since the two statutes have different functions, we feel that both should be given effect. Therefore, it is our opinion that real property must be declared annually for assessment, even though the unit tax system is in effect.