

Opinion No. 61-22

March 15, 1961

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

TO: Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District, Chaves County Court House, Roswell, New Mexico

QUESTION

QUESTIONS

1. May either the County Treasurer or the District Court refund ad valorem taxes that were voluntarily paid, if no petition for refund is filed within 90 days of payment?
2. May either the County Treasurer or the District Court refund ad valorem taxes that were voluntarily paid, if a petition for refund was filed within 90 days of payment?
3. Should improvements that are added to real property after January 1st be assessed for the current year, or should the property be assessed as it exists on January 1st?

CONCLUSIONS

1. No.
2. Yes.
3. See analysis

OPINION

ANALYSIS

Where taxes are paid erroneously and no action is commenced by the taxpayer for a refund of those taxes within the time prescribed by the statute, neither the County Treasurer nor the District Court has power to order a refund of those taxes. **In re Blatt**, 41 N.M. 269, 279, 67 P. 2d. 293 (1937). See also Attorney General's Opinion No. 6078, January 18, 1955, a copy of which we enclose.

As to the recovery of taxes paid voluntarily where the action for refund is commenced within 90 days of the date of payment, it is instructive to compare Section 76-404, N.M.S.A., 1941 Compilation, with the law as it presently reads, namely Section 72-5-4, N.M.S.A., 1953 Compilation.

The first sentence of the 1941 law reads as follows:

"Taxes paid voluntarily to any officer authorized to collect the same shall not be refunded or rebated in any instance."

The first sentence of the present law reads as follows:

"Ad valorem taxes paid voluntarily to any officer authorized to collect the same shall not be refunded or rebated in any instance, unless such person presents a claim to the District Court by petition within ninety (90) days from the date of the payment thereof, claiming the same to have been erroneously or illegally charged."

After comparing these two sections, we conclude that the District Court now has the same jurisdiction to order a refund of taxes paid voluntarily that it previously had over taxes paid under protest. It has the power to order them refunded, if the petition is timely presented.

In answering your third question, we must refer to several different authorities, since our statutes do not definitely mention improvements added after January 1st. First, we note that Section 72-2-1, N.M.S.A., 1953 Compilation, requires all property to be "declared, listed, assessed and taxed in the county where it is situated on the first day of January of each year." Section 72-2-3, N.M.S.A., 1953 Compilation, provides that "declaration shall be made of all property as it exists on the first day of January of each year." Section 72-2-10.1, N.M.S.A., 1953 Compilation, (P.S.) provides that the taxpayer must declare under oath that his declaration contains a complete statement of all his taxable property located within the county "on January 1 of the year in which the declaration is made."

While these statutes seem to establish the first day of January of each year as the tax day, and to direct the assessment of property as it exists on that day, still no express mention is made of improvements added after January first. In construing these statutes it is helpful to consider certain general propositions of law such as that contained in 84 C.J.S., Taxation, Section 60:

"The right or liability to tax is determined by the facts as they existed when the tax was paid, and it has been held that property not in existence on the date fixed for determination of taxable status is not subject to tax. Subject to constitutional restrictions, the state may select the time as of when tax liability shall be determined, and the taxable status of persons and property will be determined as of the time specified in the statute. Unless a legislative act limits the term for taxation, a tax term fixed by statute carries with it the fractional part of the year. As between the state and the taxpayer, the latter is liable for the taxes on such taxable property as he owned on the day fixed by law for the completion of the assessment, or, according to the statute, on the day fixed for the filing of taxpayers' lists or schedules, his liability attaching as of that date. Consequently, in the absence of a statute to the contrary, no liability for taxes attaches during the current year or until after the next regular date for listing or assessment, with

regard to property not previously subject to taxation which is acquired after the date when such liability ordinarily attaches, as in the case of lands purchased from the state, or personal property brought into the state from another state after such date."

We further note these general statements in 84 C.J.S., Taxation, Section 394:

"The revenue laws commonly provide that the assessment shall be made, or shall be completed on a certain day or within a certain time. Such a provision as to the time or date of assessment is so far directory that the assessment will not be invalidated by a delay beyond the statutory time, unless it is shown that the delay prejudiced the particular taxpayer by depriving him of a right to be heard before the board of equalization or otherwise operated to his disadvantages. Also, an examination of the property assessable may be begun before the assessment year commences, where the actual assessment is made within the year. However, the assessment must always be made as of the date fixed by statute for the assessment or for assessment purposes, and with respect to conditions as then existing. Within the meaning of such a statute, the assessment is completed when the persons and property to be taxed have been listed and the amounts to be collected have been computed; and after the date, until a new assessment, assessors are not bound to regard changes in title to taxable property or in its value, except under statutes requiring an increase in assessed valuation where structures or improvements are added to real property intermediate periodical assessments, as discussed infra § 411."

The only New Mexico case that we have found bearing on your question is **Dillard v. New Mexico State Tax Commission**, 53 New Mexico 12, 201 P. 2d. 345 (1949), which held that the fact that the owner of land becomes entitled to a Veterans' Exemption, or loses his right to the exemption after January 1, does not affect the taxable status of the property since its taxable or nontaxable status is determined on January first, that being the tax day for New Mexico.

We also have two Attorney General's opinions that have considered this question. The first is Attorney General's Opinion No. 3743, March 21, 1941, which held that improvements that were begun in 1940 but not completed until 1941 should be assessed according to their actual value on January 1, 1941. Nothing was said about increasing the assessment at the time of completion of the improvements. Attorney General's Opinion No. 5001, March 24, 1947, ruled that January 1 of each year is the date that determines the condition or status of taxability of property, and that assessments should be made according to the condition of the property on the first day of January. While the reasoning of these two opinions is still persuasive, it should be noted that both relied on what is now Section 72-2-17, N.M.S.A., 1953 Compilation, the operation of which has been suspended since June 10, 1955 and until January 1, 1964. See Chapter 171, Laws of 1955 and Chapter 126, Laws of 1959.

When all of these authorities are put together, we think it is clear that the first day of each year has been legally designated as the tax day for that year, and that property should be declared and assessed as it exists on January first. Improvements added to

the property at a later time during the year should not be declared or assessed until January 1 of the following year.