

Opinion No. 17-2049

August 27, 1917

BY: GEORGE C. TAYLOR, Assistant Attorney General

TO: Mr. S. E. Roehl, Assessor for Bernalillo County, Albuquerque, New Mexico.

Property Grossly Undervalued in Past Years May be Reassessed as Omitted Property.

OPINION

I have your recent letter in which you ask whether or not property, which for several years past, has been assessed at figures varying from \$ 500.00 in 1916, to \$ 14,000.00 and which is actually worth from \$ 40,000.00 to \$ 45,000.00, can be reassessed for these former years.

In reply your attention is invited to Section 5466 of the Code of 1915, reading as follows:

"If the assessor shall, before the delivery of the assessment book to the county treasurer, discover that any property has been omitted in the assessment of any year or number of years, it shall be his duty to list the same as hereinbefore provided in this article in cases where the owner of property has failed to make return thereof, and he shall place the said property and his valuation thereof upon such assessment book before delivering the same to the said treasurer; and in case such omission of property from the assessment book is discovered by the said treasurer after the assessment book has been delivered to him, it shall be his duty to put the same upon the assessment book in his possession, entering it thereon under the head of Additional Assessments, and he shall extend the taxes thereon as the County Assessor might have done if he had discovered such omission before delivering the assessment book to the said treasurer."

Section 5456 of the Code of 1915, provides that if any assessor shall knowingly receive and accept from any person a false or imperfect list of such person's property, or fails to assess any property which may be called to his attention, or of which he may otherwise obtain knowledge, he may be removed from office and imprisoned for not more than two years.

It will be noted that the section quoted uses the term "omitted" rather than "under valued," and is applicable to both assessors and county treasurers. It has been contended that such property is merely "under valued" and not "omitted," but it was held, in the case of *In re Taxes for Itasca County, State v. Weyerhauser*, (Minn.) 71 N. W. 265, 268, that:

"The constitution requires that taxes to be raised in this State shall be as nearly equal as may be, shall have a cash valuation, and be equalized and uniform throughout the

State. The true intent of the law is that each dollar's worth of property shall bear its just proportion of the public burden, and when such **property has escaped assessment to such an extent as to be deemed gross under-valuation, it has been omitted** from the just requirements of the law. It is the value of the property, as well as the description of the property, which has been omitted from assessment and taxation. If lands worth twenty dollars or more per acre were assessed at one dollar per acre, could it be reasonably said that they were not substantially omitted from assessment, within the meaning of the law?"

The decision of the court holding that such grossly under-valued property had been omitted within the meaning of the statute, was appealed to the Supreme Court of the United States and affirmed in 176 U.S. 555.

The question has never been decided by the New Mexico Supreme Court, but the above cited decision, which seems eminently fair and just and carrying, as it does, the approval of the Supreme Court of the United States, would doubtless exert a powerful, if not controlling, influence should the matter be presented to our Supreme Court.

In view of the foregoing, I feel sure that your action in reassessing this under-valued property, would be entirely just and in accordance with law. In this connection the Attorney General, in an opinion of August 21st, held that omitted property placed upon the assessment books of the county treasurer, should be placed upon the books for the respective years for which it had been omitted.