Opinion No. 23-3684

March 26, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: State Tax Commission, Santa Fe, New Mexico.

The Taxing Authorities are Required to Make Additional As sessments Where Short Acreage for any Number of Years has Been Rendered and Assessed.

OPINION

*{*28}* We quote from your letter of inquiry the following:

"In connection with the recent re-assessment of Guadalupe County made by the Tax Commission under the provisions of Chapter 133, Laws of 1921, it was found by our representative, Mr. H. V. B. Smith, that certain owners of property in the above county have been assessed for a number of years back with an acreage which now appears to be less than the actual area contained within the boundaries of the tracts described in said assessments.

On behalf of the Tax Commission Mr. Smith computed the acreage in each of the tracts in question and determined the actual shortage above referred to and the Commission proposed to reassess such acreage for said years as omitted property. The following is a list of the omitted acreage proposed to be assessed.

A. A. Jones & H. W. Kelly, on acreage of the Preston

Beck, Jr. grant omitted as follows:

For 1914, 4,670 acres, at $ 3.00 ass'd at 1/3 val. $ 4,670
For 1915, 4,670 acres, at $ 3.00 ass'd at 1/3 val. 14,010
For 1916, 4,670 acres, at $ 3.00 ass'd at 1/3 val. 14,010
For 1917, 79,362 acres, at $ 3.00 ass'd at 1/3 val. 238,886
For 1918, 4,116 acres, at $ 3.00 ass'd at 1/3 val. 12,348
For 1920, 21,252 acres, at $ 3.25 ass'd at 1/3 val. 69,068
For 1921, 21,252 acres, at $ 2.30 ass'd at 1/3 val. 48,880

$ 401,872

A. A. Jones, Receiver of Preston Beck, Jr., Grant, on acreage omitted in overlap with Anton Chico grant:

*{*29}*

For 1914, 41,025 acres, at $ 3.00 ass'd at 1/3 $ 41,025
For 1915, 41,025 acres, at $ 3.00 ass'd at 1/3 123,075
For 1916, 37,637 acres, at $ 3.00 ass'd at 1/3 112,911
For 1917, 65,124 acres, at $ 3.00 ass'd at 1/3 195,372
For 1918, 6,587 acres, at $ 3.00 ass'd at 1/3 19,761
For 1919, 59,870 acres, at $ 3.00 ass'd at 1/3 179,610
For 1920, 59,144 acres, at $ 3.25 ass'd at 1/3 192,218
For 1921, 33,260 acres, at $ 2.30 ass'd at 1/3 76,498

$ 940,470

Red River Valley Company, on acreage of Pablo Montoya Grant in Twp. 11 N. R. 26 E. omitted for the years noted:

For 1907, 660 acres, at $ .30, assessed at 1/3 $ 198
For 1908, 660 acres, at .30, assessed at 1/3 198
For 1909, 660 acres, at .50, assessed at 1/3 330
For 1910, 660 acres, at .40, assessed at 1/3 264
For 1911, 660 acres, at .40, assessed at 1/3 264
For 1912, 660 acres, at 1.00, assessed at 1/3 660
For 1913, 660 acres, at 4.50, assessed at 1/3 990
For 1914, 660 acres, at 4.50, assessed at 1/3 990
For 1915, 660 acres, at 3.00, assessed at 1/3 1,980
For 1916, 660 acres, at 3.00, assessed at 1/3 1,980
For 1917, 660 acres, at 3.00, assessed at 1/3 1,980
For 1918, 660 acres, at 3.00, assessed at 1/3 1,980
For 1919, 660 acres, at 2.85, assessed at 1/3 1,881
For 1920, 660 acres, at 3.25, assessed at 1/3 2,145
For 1921, 660 acres, at 2.30, assessed at 1/3 1,518

$
17,358

Red Valley Co., on acreage of Pablo Montoya Grant in Twps. 11 N. R. 27 and 28 E.:

For 1918, 14,850 acres at $ 3.00 $ 44,550

Imps. 400
For 1919, 14,850 acres at 2.85 42,322

Imps. 400
For 1920, 14,850 acres at 3.25 48,263

Imps. 400
For 1921, 14,850 acres at 2.30 34,155

Imps. 400
For 1922, 14,850 acres at 1.50 22,275

Imps. 800

$ 193,965

Notice of such back assessment as given the taxpayers and on February 6th, 1923, the property owners above referred to entered formal protest against such assessment and a hearing was held on that date. * * * After hearing the arguments and statements submitted by complainants and examining exhibits filed, it was decided, due to the legal questions arising, that the attorney for complainants would prepare and file briefs and exhibits with the Commission and the same would be submitted to your office for your consideration.

*{*30}* The same are herewith enclosed. The Commission desires that you examine these papers and advise us as to what action should be taken in the matter. * * *"

We have examined rather carefully the law bearing on the subject, and, likewise examined the briefs submitted by complainants.

In view of the various court procedures, we find the question not without complications but apparently the court did not have under consideration or adjudicate the question of acreage or the sufficiency of the rendition. In view of this, we think the several judgments may not stand in the way of recovery. In any event, there will be several years not affected by any judgment.

We deem it beyond question that our law contemplates payment of taxes on all property, subject to taxation, within the limits of this State. It seems probable that, in the present case, the omission of property from the tax rolls was through mutual mistake of both taxpayer and the taxing authorities. In order that property may not escape its just share of taxes, our laws seem adequately to provide for such contingencies.

Complainants contend the provisions of Chapter 133, Session Acts 1921, may not be invoked because such application would make the same clearly retroactive and objectionable in Law. We think this contention is not sustained by the various decisions on retroactive laws providing for re-assessments and means of enforcing payments which, in good faith, should have been made at some previous time. It is not at all incumbent, however, to proceed under the new act. Sec. 602 Chap. 133, S. L. 1921 provides: "All laws and parts of laws repealed by Sections 109, 237, 317, 478 and 509 of this Act shall remain in force * * * to enforce or secure rights or liabilities already accrued thereunder." If our interpretation of said Section 602 is correct, the old law is still in force to all intents and purposes necessary for a proper adjudication of the questions involved. So, in presenting for your consideration the following observations, we are applying the old law to the cases in question although there is very little

difference between the old and new, governing such issues, the latter being an exact duplication of the old or a slight amendment thereto.

In the first instance, we think it incumbent on the taxpayer to list **all** his property for taxation. Sec. 5437 N.M. Stat. Ann. Code 1915 provides: "Every inhabitant of the State, of full age and sound mind, shall, in each year, make a list of all his property subject to taxation of which he is the owner or has the control or management * * *." This makes it clear that complainants should have listed **all** their property. The latter portion of the same section provides: "Such list * * * shall show * * * a description of all real estate, such as would be sufficient in a deed to indentify it so that title thereto would pass * * *." The "description" of the real estate is required in order that taxing authorities may be able to classify and appraise the values thereof.

Section 5447 of said Code requires the person making such list or rendition to swear that the same "contains a full and correct statement of all property."

Section 5455 of said Code provides: "If any person shall fail to render a **true** and **complete list** of his property (emphasis ours) * * * the assessor shall make such list according to the best *{*31}* information he can obtain, and such person shall be liable to a penalty of 25 percent upon all of the tax levied against all of his property * * *." The idea of rendering for taxation **all** of one's property and not the particular description thereof seems prominent throughout our tax laws. The actual acreage, belonging to any taxpayer, within certain metes and bounds would seem to be more important in this instance than the description itself. To describe one's cattle as "stock cattle" and render for taxation only 50 percent of the number actually owned would be an evasion of the law although correctly described. To render a fractional 40-acre tract of land as the NW 1-4, containing 28 acres, when as a matter of fact the tract contained 38 acres would be such an evasion although the description unobjectionable.

If it may be shown that the property in question was valued and taxed on the acreage actually rendered, the acreage not rendered may be assessed as omitted property under the head of "Additional Assessments" in conformity with Sec. 5466 of said Code. In event notice may be deemed proper, it would not be inadvisable that the Tax Commission, the county treasurer and the assessor all give the notice prescribed by Sec. 5467 of said Code. In making the Additional Assessment, the property might be described as in the original assessment except as to the acreage. The omitted acreage may be inserted in lieu of the acreage actually rendered.

Such an Additional Assessment would probably be sufficient to provide for a lien and sale of the property for taxes. In any event, the way would be open for a personal judgment under Sec. 5509 of said Code.

After the liability of complainants is fixed, there will be sufficient time to obtain permission of any court for further action if such permission may be necessary.

Adverting to certain Acts of the recent Legislature, "No Man's Land" seems to have "gone up in thin air." We assume then there is nothing to complainants' contention that a portion of the property involved is in no county and, therefore, may not be taxed.

There are several complicated questions for consideration in connection with this matter but, keeping in mind the intention of the old law that all property within this state, subject to taxation, should bear its just and full burden of such taxes, we are advising that you will be justified in making these additional assessments and attempting the collection of the taxes due as a result of such additional or re-assessment.