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EQUALIZATION

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WHEN the "History of the State Board of Equalization of the State of Colorado" is written in an unabridged and erudite form, undoubtedly the outstanding landmarks in the development of the powers of the State Board will be defined as the decision in the case of *People v. Lothrop,* 3 Colo. 428, and the final decision in the present series of cases pending. At the moment this second landmark must be announced as the decision of the Circuit Court of Appeals for the Tenth Circuit, rendered by Judge Phillips on October 17, 1929, in the three consolidated cases, in which the Union Pacific, the Tramway Company and the Santa Fe were plaintiffs and certain Counties were defendants.

We can only attempt here a brief, profane sketch of the background necessary for a fair realization of the import of this recent decision.

Competitive Assessments

Let us call assessment the evaluation for tax purposes of all the property of an individual taxpayer, be that taxpayer a natural or an artificial being. Then, we remember that the properties of public utilities and of corporations having a continuity of plant, appurtenances and business in two or more counties are assessed by a State Agency, are centrally assessed, and that the properties are not assessed piecemeal in the several counties. All other property is assessed locally by the several County Assessors. This dual system of assessment creates the possibility of competition between the two classes of property and certainly is the claimed excuse for much discussion and oratory upon the question as to which class is *not* assessed the closer to 100% full, cash, actual, real, market value; or whatever our ideal is.

Then we recollect that the major part of the State Revenue comes from levies against these same assessments of property made locally. Each County Assessor is therefore invited to become the Champion of the taxpayers of his County to see to it that, by means of low assessments, his County as a whole shall not make too high a contribution to the state funds and shall be valued (for tax purposes only) a little lower than the neighboring counties. The certainty of "full valuations" is not too apparent under this situation.

We further realize that on account of changing economic conditions there is often an occasion for the owners of some type of property to plead for lower valuations and there exists the possibility of competition between classes of property, even within a given county.

It has even been suggested that the Counties might be interested in keeping the total valuation of the State at a low level, for the county levies are generally unlimited, but the State levy is definitely limited. Hence results a sort of control over the total activities of the State and a practical brake upon centralization of governmental powers in the State.

It was to control and solve all these nice little problems that Section 15 of Article X of the Colorado Constitution was written. This section creates and defines the powers of State and County Boards of Equalization. We purpose a short inquiry here as to the powers under the Constitution, paying no attention to any statutory powers which have been given especially to the County Boards.

The See-Saw Decision

As originally written, the constitutional duty of the State Board of Equalization was to "adjust and equalize the valuation of real and personal property among the several counties of the state". Quite promptly, in 1877, the State Board looked over the county valuations and increased the valuations in twenty counties and decreased them in four, but with a net increase of over five million dollars in the state total assessment. This certainly had the appearance of a fulfilling of the duty imposed by the constitution, but Arapahoe County was a stickler for local rights and asked the Supreme Court what it thought about this action. The Court then wrote the

famous decision of *People v. Lothrop,* 3 Colo. 428. The action of the State Board was held invalid because equalization can not mean changing the total State valuation. The only power of the State Board was declared to be the right to raise one group of counties and to then lower another group, so that the total should remain unchanged. If one end of the board goes up, the other end must come down. The Board could get a lot of exercise in one place but could get nowhere.

This decision quite efficiently squelched the State Board and our State had no equalization for many years. The situation became rather desperate from the point of view of many. A tearful appeal was made to the Supreme Court to reconsider the *Lothrop* decision, but the Court regretfully declined yet considerately pointed to the Legislature as a source of relief. See *In re Assessment,* 25 Colo. 296.

The Legislature did on various occasions (especially 1889, 1891 and 1899) try to give power to the State Board to raise or lower classes of property and to raise county totals. In 1899 the State Board again made a serious attempt to adjust the valuations of different classes and types of property in the several counties, but unfortunately for it the Supreme Court again held its action invalid, deciding that only one section of the statute pertaining to this subject could be in force at one time; a very aggravated case of implied repeal. *People v Ames,* 26 Colo. 126.

The Problem Solved

As far as these problems of equalizing classes of property among the several counties are concerned, a double answer was found. First the State Tax Commission was organized with very broad powers over assessments and full control of county assessors. The validity of the removal of the practical power of assessment from the counties to the state agency was approved by the Supreme Court in *People v. Pitcher,* 56 Colo. 343. This power is in the nature of assessment or reassessment, but it is closely allied with practical equalization.

The true power of equalization still resided in the State Board, so the Constitution was amended (1914) with the intent of broadening that power. The amended Section 15 of

Article X says that it is the duty of the State Board "to adjust, equalize, *raise* or *lower* the valuation of real and personal property *of* the several counties of the state, *and the valuation of any item or items of the various classes of such property*". The italicized words indicate the changes in the definition of powers.

So, the Tax Commission recommending and the State Board ordering, certain raises as to County valuations were made in 1915 and were thoroughly approved and sanctified by the Supreme Court. See *People v. Pitcher,* 61 Colo. 149.

Thus was practically ended this phase of the controversy. Since then the counties have largely done as the Tax Commission has recommended although there is still the possibility that the State Board will not always agree with the Tax Commission as to changes in valuations of classes of property in a given County. We instance the case of Phillips County obtaining reductions from the State Board in 1918.

A New Problem Arises

We have seen the solution of the old problems of equalizing and changing the values of classes of property. But did this new definition of powers of the State Board offer a new form of administrative relief to the taxpayer himself? Could Mr. Jones of Burgville apeal to the Governor, the Secretary of State, the Treasurer, the Auditor and the Attorney General, sitting en banc for two weeks as a State Board, for a revaluation of his three cows, his 40 acres of dry land and his alleged improvements? And if Mr. Jones did convince the State Board, without a view of the "premises", that the assessor had seriously imposed upon him, could the State Board at the same time of granting a decrease to Mr. Jones make an increase in the assessment of Mr. Smith whom Jones reported was making a lot of money on the stock exchange (ante Oct. 24, 1929).

Or how about the same sort of questions applied to corporations or to public utilities which might present influential evidence in favor of reductions? Or should the State Board furnish the forum for the professional or conscientious objector to any existing taxation of Big Business?

The *decreases* obtained by various corporations have not resulted in any serious question being raised. The following

statements show the extent of the decreases granted by the State Board in the years of 1915 to 1928, inclusive, to individual taxpayers:

Three of the larger railroad companies obtained reductions in 1915, 1916 and 1917 totalling $3,959,593. Applications of the interstate lines for reductions since 1917 have been uniformly denied.

The local Colorado Short Lines have had some success in this direction. Seven or eight such railroads have obtained in this period a total of decreases in assessment amounting to $6,127,290.

Some of the companies which the Tax Commission, in making its assessments, calls "Local Public Utility Corporations" have also sought reductions. The total for five such companies in reductions ordered by the State Board amounts in said period of fourteen years to $26,727,502. One such property has had its assessed value reduced in each of ten of these years, a total of $14,739,352, while another property accounts for a total reduction of $11,409,980 in four years.

But locally assessed companies have also appealed to the State Board, especially in recent years. Total reductions made by the State Board in county-made assessments have amounted to $9,116, 453 in favor of about nine companies.

Thus the total *decreases* ordered by the State Board on all assessments is $45,930,838. (Note: We *think* our totals, based upon Tax Commission reports, are correct, but our ordinary figuring of our income tax return deals with smaller figures).

Now how about *increases?* The story is shorter but it brings us to the direct cause of the recent decision.

In 1915 the State Board for the first time considered granting reductions to individual railroad companies. It determined to so favor three companies to the amount of $1,700,000, but it also resolved to add that amount to the assessment of another company not appearing before it. However this other railroad company learned of this and was able to induce the State Board to rescind its action.

In 1919 to 1922 inclusive, the State Board raised the assessment of one railroad company a total of $1,167,690. Apparently these increases were accepted.

Then, at the end of the 1927 session, the State Board announced that it had ordered reductions to the amount of $3,717,900 and had also ordered increases in the amount of $3,087,560. The increases were on properties of seven interstate public utilities and upon one local utility. The State Board having adjourned before this action was made public in any way, the companies affected by the increases had no appeal to the State Board for a hearing, and the actions had been taken without special notice to them and without any complaint as to such assessments being filed with the State Board.

Most of these companies paid the tax under protest so far as it was based upon this increase over the Tax Commission valuations, and then brought suits against the several counties. Some twenty-four suits were brought, five being in the Federal Court, as in each of those instances over $3000 in taxes was involved. Demurrers were filed in all the cases. The Federal District Court sustained the demurrers of the Counties in the Federal cases. Three of these cases were appealed to the Circuit Court of Appeals with the result that that Court held that the State Board orders of increase were void and that the demurrers should have been overruled.

The C.C.A. Decision

The reasoning and findings of the Tenth Circuit Judges in holding that the State Board has no power to deal with individual assessments are indicated by the following quotations from the opinion:

"It will be noted that the language (of the Constitution) is not 'item of property' but 'item of a class of property'. We think the word 'item' is here used in the sense of subclass."

"If the constitutional amendment should be construed to mean that the State Board of Equalization should accomplish this purpose by examining the assessment of each individual taxpayer and bringing the assessment of each taxpayer up to 100% of the actual value of the property, an impossible task would be imposed upon the State Board which by the statutes of the State must complete its duties within the period of 15 days, including two Sundays".

"Again valuing the property of a particular taxpayer as a whole is in its essence assessment of such taxpayer's property, while dealing with and raising or lowering the value of classes or subclasses of property without

reference to ownership within a designated territorial limit is in its essence equalizaton. Assessment is personal, while equalization is impersonal."

"While the broad language of the Supreme Court of Colorado, in *People v Pitcher,* (61 Colo. 149) tends to support the contention of the defendants, the holding of the court in that case went only to the extent of sustaining an order which raised the valuation of classes and subclasses of property and we do not think the court, by the language there employed, intended to hold that the State Board of Equalization, under its constitutional power, was authorized and required to examine into the valuation of the property of individual taxpayers".

On account of this decision limiting the State Board to pure equalization matters, no orders of either increases or decreases in individual assessments were made by the State Board in 1929.

The Future

This Tenth Circuit opinion may not be final. It may not be adopted by the Supreme Court of Colorado in other cases which will presumably be appealed there.

This C.C.A. decision does not deal specifically with the power of *County* Boards of Equalization. Certain County Boards entered orders in 1929 raising the valuations of certain Utilities certified to them by the Tax Commission. The State Board countermanded these orders. But suppose the State Board had not done so, what would have been the result?