

OFFICIAL OPINION NO. 72-32, Application for abatement of taxes.

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

June 2, 1972

Jon Mattson
States Attorney, Lawrence County
Deadwood, South Dakota 57732

OFFICIAL OPINION NO. 72-32

Application for abatement of taxes.

Dear Mr. Mattson:

You have requested my official opinion on the following factual situation:

The Lawrence County Assessor's office made an error in the valuation of a taxpayer's property some time prior to 1962, which error appeared through 1969 taxes. The property was valued at \$2,790 and the Assessor added another zero to make the value \$27,900. The taxpayer in August, 1971, applied for an abatement or refund of taxes on the ground that an error had been made in an identifying entry or description of the property, in entering the valuation thereof or in the extension of the tax, to the injury of the complainant.

Lawrence County Commissioners have okayed the abatement for the years 1964 through 1969, but have denied any abatement prior to that time because of the six year statute of limitations.

Concerning these you have inquired:

Is there a statute of limitations applicable to the above factual situation?

Article XI, Section 2 of the State Constitution provides that " ... The valuation of property for taxation purposes shall never exceed the value thereof." SDCL 10-18-1 authorizes, in certain instances, the granting of relief where an assessment has been_ made or a tax levied which is invalid for any of the reasons stated therein. Subdivision 1 provides:

When an error has been made in any identifying entry or description of the property, in entering the valuation thereof or in the extension of the tax, to the injury of the complainant; ...

In the facts you have cited there appears to be an error of over \$25,000 in the entering of the valuation of this property. This fact is not disputed by any of the parties. In a similar instance my predecessor held in 1949-50 AGR 116:

It is my opinion that a situation could exist where property is assessed by the assessor in an amount which is so ridiculously out of line with its true value that relief may be granted on the theory that it must be assumed that there was an error made "in entering the valuation thereof" within the meaning of SDC 57.0801(1), SDCL 10-18-1(1) It is my opinion that the taxpayer is entitled to an abatement of a tax extended against him, in the face of such an erroneous assessment as in the case of your example 2 (there, two hogs were assessed at \$2,615 apiece.)

In some instances it has been held that the mere excessiveness of a valuation does not provide opportunity for relief under the particular abatement statute. However; I believe this must be taken as it appears in each individual situation and I find here that there is such excessive valuation as to constitute an erroneous entry justifying relief under 10-18-1.

As to the direct question of the period of limitations, I would call your attention to 1949-50 AGR 302 herein. It was held that property which was made exempt by the Constitution, but nevertheless taxed, could properly receive an abatement and refund, in spite of the six year statute of limitations as has been generally held for the refund of taxes, 1918 AGR 77; 1930-31 AGR 761; 1945-46 AGR 142, 326; 1947-48 AGR 281. No period of statutory limitation can operate as a bar to the right to abate taxes which were illegally levied and assessed. Any tax which is illegal from the beginning, cannot ripen into a legal tax by mere lapse of time.

Our Supreme Court has held in the case of **Williams v. Stanley County**, 69 S.D. 118, 121, 7 N.W. 2d 148, that the above quoted provision of the Constitution and the statutes relating to assessments provide a right to a taxpayer not to have his property assessed in excess of the actual value of the property taxes, and then where such excessive valuation is shown the owner is entitled to relief on the same.

It is my opinion, therefore, that where property has been assessed in excess of its actual value in violation of Article XI, Section 2 of our Constitution, that the statute of limitations will not operate as a bar to the action of the county commissioners in refunding taxes based on such illegal valuation.

I should note also that although these taxes were voluntarily paid and the taxpayer did not exercise his right to appear before the boards of equalization, our court has held that there are concurrent remedies under the law which allow either a direct appeal to board of equalization, a payment under protest, and suit to recover, or an application for refund under certain conditions, as here. See **Casey v. Butte County**, 52 S.D. 334,338,217 N.W. 508.

Respectfully submitted,

Gordon Mydland
Attorney General