



Winter 1966

Ad Valorem Taxes—Omitted Property and Improvements—Assessments

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Recommended Citation

Cleopatra Campbell, *Ad Valorem Taxes—Omitted Property and Improvements—Assessments*, 6 NAT. RES. J. 105 (1966).

Available at: <https://digitalrepository.unm.edu/nrj/vol6/iss1/8>

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COMMENTS

AD VALOREM TAXES—OMITTED PROPERTY AND IMPROVEMENTS—ASSESSMENTS*—In New Mexico some county assessors are now levying special assessments on improvements found on real property even though taxes have already been collected on the property as “vacant land.”¹ The county officials, thinking the land was unimproved, assessed it as unimproved or vacant. Later the officials discovered that there were buildings on the property, so they levied additional taxes in order to collect the total amount of taxes that should have been paid originally. This Comment will examine the authority of taxing officials to levy additional taxes on previously assessed real property. The specific question is whether county tax officials in New Mexico have the power to tax discovered improvements as “omitted property,” “erroneously assessed” property, or “erroneously described” property.

Real and personal² property in New Mexico is taxed under a process in which the owner declares his property for valuation,³ and the county assessor determines the value and levies the tax.⁴ Of the two most common methods of valuing property, the unitary valuation and the component valuation,⁵ the unitary method of valuation is used in New Mexico. That is, the valuation of the land and the improvements is regarded as a single assessment.⁶ For example, where the property to be assessed is a house and lot, the separate calculation of the value of each is *procedural* and does not mean

* N.M. Stat. Ann. §§ 72-8-3, -2-42 (Repl. 1961).

1. Albuquerque Journal, July 23, 1965, p. D-1, cols. 1-2.

2. Taxation of personal property is beyond the scope of this Comment.

3. N.M. Stat. Ann. § 72-2-3 (Repl. 1961). The fact that the taxpayer, in violation of the law (N.M. Stat. Ann. 72-2-10.1 (Repl. 1961)), usually does not return his property for taxation, but waits for the assessor to send him a form repeating the description of the prior year, seems to be of little concern to anyone. Some tax officials believe that the taxpayer's violation would deprive him of equitable standing in the courts. (Interview With Edward M. Murphy, Bernalillo County Assessor, Sept. 28, 1965.) However, this is not clear since tax officials *help* the taxpayer violate the law by sending him a tax notice that already has the property description filled in. Also, if the assessed taxpayer acquired the realty after the year when the assessment was insufficient, the equities would seem to be with him.

4. See note 3 *supra*.

5. In the component method of property valuation, a value is placed on the land and a value is placed on the improvements. The total value of the two units then becomes the assessed value. See note 34 *infra* and accompanying text.

6. San Luis Power & Water Co. v. State, 57 N.M. 734, 263 P.2d 398 (1953) (“improvements affixed to land cannot be separately assessed”); Taylor v. Shaw, 48 N.M. 395, 151 P.2d 743 (1944).

that there was an individual valuation of each.⁷ The sale value of the property, land and improvements together, is the value attached to any particular piece of real estate. The method of valuation, unitary or component, can result in very different considerations when attempting to tax overlooked improvements.

The New Mexico statutes create two echelons of property tax administration. One is at the county level: the county assessor, the county treasurer, and the county board of equalization (which is usually the board of county commissioners). The state, through the State Tax Commission, forms the second echelon.⁸ Because the State Tax Commission has very limited power to deal with omitted property under section 72-6-9 of the New Mexico statutes, the county officials have almost exclusive jurisdiction.⁹

In any attempt to tax overlooked property, the county officers are guided by sections 72-8-3 and 72-2-42 of the statutes. Section 72-8-3 directs the county treasurer to correct erroneous descriptions on the tax roll and to assess any omitted property.¹⁰ Probably the more important statute is section 72-2-42. Section 72-2-42 empowers the county assessor to tax property omitted from the tax rolls during any of the preceding ten years.¹¹

7. In *State v. Jemez Land Co.*, 30 N.M. 24, 226 Pac. 890 (1924), the value of the land could be determined, and then the value of the standing timber, but there was only one valuation—the total.

8. N.M. Stat. Ann. §§ 72-1-1 to 72-8-52 (Repl. 1961, Supp. 1963).

9. The State Tax Commission, under N.M. Stat. Ann. § 72-6-9 (Repl. 1961), has dual powers to act in assessing property previously untaxed: if the property has been erroneously described and no taxes have been paid, or if it is "any property" which has been omitted and on which no taxes have been paid. Note that if any taxes have been paid, the tax commission has no jurisdiction.

10. N.M. Stat. Ann. § 72-8-3 (Repl. 1961):

If any property on which taxes have become delinquent shall be found to have been erroneously described or omitted from the tax roll for any year or years the treasurer shall correct any errors of description and assess any omitted property, and upon such defect being cured by proper description or by being properly placed on the tax roll, the same proceedings may be had with respect to such property at any later date in like manner as above provided and such proceedings may be had pursuant to the posting and publication of notice suitably modified and designated as supplemental to the prior proceedings and sale of delinquent property for the same year.

The provisions of § 72-8-3 are limited to property "*on which taxes have become delinquent.*" It might be asked how taxes could become delinquent on property that was never assessed.

11. N.M. Stat. Ann. § 72-2-42 (Repl. 1961):

If the assessor shall, at any time before delivery of the assessment roll to the county treasurer, discover that any personal property has been omitted in the assessment of any year, or number of years, and is, at the time of the discovery of such omission, owned or possessed by the same person as was the owner or in possession thereof at the time of such omission, it shall be

The language of sections 72-8-3 and 72-2-42 purportedly authorizes county tax officials to assess overlooked improvements. But construing the words "any property" in section 72-8-3 and "real estate" in section 72-2-42 requires more than a common sense layman's interpretation. The concern of this Comment is whether the statutes cited have given taxing officials authority to make additional levies when the property has already been taxed as though it were vacant.

While the New Mexico Supreme Court's probable interpretation of the omitted property statutes is uncertain, the court has clarified the terms "erroneously assessed" and "erroneously described" used in sections 72-8-3 and 72-6-9.¹² The explanation of "erroneously assessed" given in the Arkansas case of *Clay County v. Brown Lumber Co.*¹³ was approved by the New Mexico Supreme Court in *In re Blatt*.¹⁴ In *Clay County*, the lumber company claimed

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 for every year, but not more than five (5) years, during which said property was omitted, upon the assessment roll for the year in which such property is discovered, before delivering the same to the treasurer; and in case such omission of property from the assessment roll is discovered by the treasurer after the assessment roll has been delivered to him it shall be his duty to put the same upon the assessment roll 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 roll to the treasurer. And in case of the like omission of real estate from the assessment roll for one (1) or more years, like proceedings shall be had without regard to whether the property is still owned by the same person who was the owner at the time of such omission but no real estate shall be placed on the tax rolls for the purpose of taxation that has been omitted from the rolls when a period of ten (10) years shall have elapsed between the time the assessment should have been made and the attempt to make an omitted assessment. Any assessor or treasurer so placing property on the assessment roll shall immediately notify the state tax commission, which shall thereupon make a corresponding entry on the roll in its possession.

12. Section 72-6-9, N.M. Stat. Ann. (Repl. 1961), which gives the State Tax Commission authority to assess omitted property, is entitled "Authority To Assess Omitted and *Erroneously Assessed* Property." (Emphasis added.) The body of the statute, like the body of section 72-8-3, which gives the county power to act, refers to erroneous descriptions. Since any judicial construction of the statutes would probably consider all the statutes to glean the legislative intent, this Comment reviews interpretations of both "erroneously assessed" and "erroneously described."

13. 90 Ark. 413, 119 S.W. 251 (1909).

14. 41 N.M. 269, 67 P.2d 293 (1937). The Blatts were contesting their 1933, 1934, and 1935 assessments. The supreme court held that they were limited to the statutory remedies, and that while a court could set aside an assessment, it could not revalue and reassess the property.

a refund under an Arkansas statute¹⁵ permitting refund of taxes "erroneously assessed" because its property had been overvalued. The Arkansas court held that the statute did not extend to a case of overvaluation of property; the statute referred to an assessment that was invalid because it deviated from the law.¹⁶ By approving the *Clay County* explanation of "erroneously assessed," the New Mexico court would predictably hold that land previously assessed as "vacant," and upon which taxes were paid, was not erroneously assessed if it later was shown that the land was actually improved.

It is also unlikely that the New Mexico court would hold property to be "erroneously described" within the meaning of the omitted property statutes¹⁷ if the description failed to mention the existence of improvements on the land. A description seems to be erroneous if it cannot identify the real estate sufficiently to pass title. This is the criterion used in section 72-2-3 of the New Mexico statutes¹⁸ to determine if the taxpayer has made a satisfactory rendition of his property for taxation. In *Taylor v. Shaw*,¹⁹ the New Mexico Supreme Court adopted the general rule that title to improvements passes even though there is no mention of the improvements in the property description. Unfortunately, New Mexico judicial consideration of property descriptions, except for *Taylor*, apparently has been limited to vacant land because the cases discuss the boundaries of the real estate²⁰ and distinguish erroneous de-

15. Now Ark. Stat. Ann. § 84-935 (1947):

In case any person has paid or may hereafter pay taxes on any property, real or personal, erroneously assessed, upon satisfactory proof being adduced to the county court of the fact, the said court shall make an order refunding to such person the amount of the county tax so erroneously assessed and paid.

16. 119 S.W. at 254:

If the property paid on was exempt from taxation, or if the property was not located in the county, or if the tax was invalid, or if there was any clear excess of power granted, so as to make the assessment beyond the jurisdiction of the assessing officer or board, then the provisions of Kirby's Digest § 7180 [would apply and taxes could be refunded because erroneously assessed].

17. N.M. Stat. Ann. §§ 72-8-3, -2-42, -6-9 (Repl. 1961).

18. N.M. Stat. Ann. § 72-2-3 (Repl. 1961):

Every person, firm, association or corporation shall, in each year, make a declaration of all property subject to taxation . . . and a description of all real estate, such as would be sufficient in a deed to identify it so that title thereto would pass. . . .

19. 48 N.M. 395, 401, 151 P.2d 743, 746 (1944): "Permanent improvements of course pass with the land conveyed without more than a description of the realty."

20. *De Gutierrez v. Brady*, 43 N.M. 197, 88 P.2d 281 (1939). Failure to object to the inclusion of extrinsic evidence to aid in the identification of real property resulted in acquiescence by the plaintiff that the description was sufficient.

scriptions from insufficient descriptions.²¹ If a description is not erroneous when it is sufficient to pass title, and if the title to improvements passes without including them in the property description, then it follows that a description which does not mention the improvements is not erroneous. Thus, when improvements have not been considered in valuing the property, there is no error of description that would authorize tax officials to reassess the property.

If the New Mexico court's interpretations of "erroneously assessed" and "erroneously described" have been construed correctly, an improvement found on land already assessed and taxed as vacant cannot be added to the tax rolls under the statutory provisions for the belated taxing of erroneously assessed or erroneously described property. What, then, of the authorization of county tax officials to place "omitted property" on the tax rolls?

There has been very little litigation involving the correct interpretation of the omitted property statutes. (It may be that tax officials have been inactive because of lack of personnel and time.) Consequently, the New Mexico Supreme Court has not given a clear answer to the problems of taxing overlooked improvements as omitted property. Two cases touching on the question have reached different, but not necessarily conflicting, results.

In *Vermejo Club v. French*,²² decided in 1938, the county assessor had made the prescribed quadrennial assessment,²³ but he later discovered that timber standing on the club's property had not been included. The assessor did not wait for the next quadrennial assessment. Relying on the authority of a 1933 law²⁴ similar to the present section 72-8-3, the assessor levied a tax on the timber as omitted property. The New Mexico Supreme Court held that the quadrennial assessment was final and binding during the four-

21. *Otero v. Sandoval*, 60 N.M. 444, 292 P.2d 319 (1956). The description, "NE $\frac{1}{4}$ 160 acres," was insufficient because it neither gave intrinsic evidence nor suggested extrinsic evidence which could be used to identify the land.

22. 43 N.M. 45, 85 P.2d 90 (1938).

23. N.M. Laws 1933, ch. 86, §§ 1-7, repealed by N.M. Laws 1965, ch. 143, § 1. A quadrennial assessment meant one assessment every four years. The county assessor would place a value on the property and this same value would be used as the tax base for that year and the next three years.

24. N.M. Laws 1933, ch. 86, § 5:

Whenever any real property is found to have been omitted from the tax roll . . . its value shall be fixed and . . . [it] shall be listed for the number of years omitted

year period,²⁵ and said that if the assessor's construction of the statutes were followed, there could result the "calamity" where "all real estate 'grossly undervalued' in past years would be subject to reassessment as omitted property, although taxes assessed had been paid."²⁶ These "calamities" the court mentions would include possible political harassment, difficulties in determining a value for past years, shadows over real estate transactions in which potential purchasers could not be certain that they were buying a title free of tax obligations, and the increased litigation between purchasers and sellers on the one hand, and property owners and taxing officials on the other.

A different result was suggested through dictum in *Taylor v. Shaw*,²⁷ a suit to quiet title. In *Taylor*, the land owner asserted that a tax deed could not convey title to improvements on his property when the improvements had not been included in the calculation of the unpaid tax. The New Mexico Supreme Court held that title to the improvements passed to the purchaser of the tax deed, though they were not included in the assessment which resulted in the sale of the property to the state for taxes. The supreme court said:

Whatever improvements were made upon the land were not taken into consideration in fixing the value here, it is true. The insignificant amount of the tax itself would show this. But that goes simply to an undervaluation and not to the regularity of the assessment. The improvements spoken of are permanently affixed and were at all times a part of the realty.²⁸

But the court added this significant observation by way of dictum:

The Assessor could, and should, if he finds the improvements to have been placed upon the property as alleged, and not therefore valued, place them upon the tax rolls as 'found' and omitted property for 'any year or years,' 1941 Comp. Sec. 76-703,²⁹ that taxes might

25. The court was also construing N.M. Laws 1933, ch. 86, § 2:

[T]he value of all such property as finally fixed in the year 1934, and each succeeding fourth year thereafter shall be final and binding on all taxing authorities and all owners of such property for four successive tax years, except as to right of appeal.

26. 43 N.M. at 55, 85 P.2d at 96.

27. 48 N.M. 395, 151 P.2d 743 (1944).

28. *Id.* at 399, 151 P.2d at 745.

29. Now N.M. Stat. Ann. § 72-8-3 (Repl. 1961).

be collected thereupon. But this in no way affects the tax deed or make of the improvements anything but that which they always were, and are . . . a part of the real estate.³⁰

The statutes being construed in these cases were overlapping, but both were in effect until the quadrennial assessment laws were suspended in 1955³¹ and finally repealed in 1965.³² Thus, with different fact situations, and different, but overlapping, statutes being applied, the New Mexico court held in *Vermejo Club* that property once assessed could not be revalued, but issued dictum in *Taylor* that overlooked improvements should be added as omitted property. Perhaps *Vermejo Club v. French* and *Taylor v. Shaw* can be reconciled,³³ but the cases demonstrate a need for legislative clarification or judicial determination of the effect and operation of the New Mexico statutes concerning omitted property. It is not surprising that judges, tax officials and taxpayers alike are uncertain as to the interaction between these statutes.

In other jurisdictions having omitted property statutes, the *method* of valuing and assessing real property appears to be the critical factor in determining tax liability for improvements not included in the original assessment. The most common methods of assessing property are: (1) a unitary plan whereby the improvements and the land are valued together, as in New Mexico, or (2) a component plan where the improvements and the land are valued separately.³⁴ The method prescribed by statute or state constitution controls the taxation of omitted property, absent a clear legislative enactment designed to prevent the escape of omitted property from taxation.

For example, in the Minnesota case of *Davidson v. Franklin Ave. Inv. Co.*,³⁵ a purchaser of a four-story building brought a

30. 48 N.M. at 399-400, 151 P.2d at 745.

31. N.M. Laws 1955, ch. 171, § 1.

32. N.M. Laws 1965, ch. 143, § 1.

33. In *Taylor*, the year the taxes were unpaid, 1938, was the time of the second quadrennial assessment. It could be that the court overlooked this fact when it relied on another statute (set forth in note 10 *supra*) on which to base its dictum that the assessor should add the improvements as omitted property. Or the court may have realized that under *Vermejo Club v. French*, see note 22 *supra* and accompanying text, previously omitted property could be added in the quadrennial assessment year.

34. The method of placing a value on the land and a value on the improvements before affixing a total value is regarded as a unitary assessment in New Mexico. See text accompanying notes 7 *supra* and 55 *infra*.

35. 129 Minn. 87, 151 N.W. 537 (1915).

breach of warranty suit against his grantor when the tax officials levied back taxes on the building because it had not been taxed with the realty. The Minnesota court held that there could be no breach of warranty because there simply was no liability for taxes. The building was not omitted or escaped property. The entire property had been assessed, but it had been undervalued. This case demonstrates a basic theory: the improvements and the land become one, and an assessment of either constitutes an assessment of both.

In Oklahoma, the statute³⁶ provides for the assessment of realty but not for the separate assessments of the land and improvements. In *Roberts v. Fair*,³⁷ the land had been assessed, but a residence and other buildings had not been included in the valuation. The Oklahoma court held that once either the land or the improvements were assessed, the whole property was valued and no additional levy was possible. The court concluded that "any attempt to add more taxes to those already assessed and collected is an attempt to relist, revalue, and reassess real property that has been undervalued, and . . . it does not constitute 'omitted property'. . . ."³⁸

While South Dakota follows the unitary plan of assessing land and improvements together,³⁹ its legislature authorized the taxation of previously omitted property by permitting the correction of errors in the *quantity* of real property assessed.⁴⁰ The statute was shown to be only partially effective to accomplish its purpose in *Palmer v. Beadle County*,⁴¹ a case in which both the taxpayer and the tax officials were confused regarding the location of a house.⁴² The house was found to be on a lot which had been assessed and taxed as vacant. It was held by the South Dakota court that there was no

36. Okla. Stat. Ann. tit. 68, § 15.3 (1954):

Real property, for the purpose of ad valorem taxation, shall be construed to mean the land itself . . . and all buildings, structures and improvements or other fixtures of whatsoever kind thereon

37. 174 Okla. 139, 50 P.2d 152 (1935).

38. 50 P.2d at 155.

39. S.D. Code § 57.0312 (1939).

40. S.D. Code § 57.1002 (1939):

If there shall be any error in the description or quantity of real property assessed or taxed such error may in like manner be corrected and the tax collected in the proper amount

41. 70 S.D. 99, 15 N.W.2d 6 (1944).

42. Mrs. Palmer owned two lots, numbered 3 and 4. Lot 3 was vacant; lot 4 had a house on it. However, for years lot 3 had been assessed with a house, and lot 4 had been assessed as vacant. No taxes at all were paid on lot 4. The county started action to take lot 4 by tax deed. Mrs. Palmer tendered the amount which would have been due had the lot actually been vacant, but the county refused to accept an amount less than would cover the assessment of the lot with the house.

error in the quantity of property assessed—"the entire lot was assessed; there was no error in the quantity of real property assessed, the error was in the valuation"⁴³—nor was it "omitted property."⁴⁴ There was no South Dakota statute permitting reassessment of undervalued property. *Palmer* shows that a legislative attempt to fill in gaps can fail if inadequately drafted.

Legislative oversights in writing statutes can be cured by a judicial discovery of legislative intent. Such was the finding of the North Dakota Supreme Court in *Mueller v. Mercer County*.⁴⁵ Originally, the North Dakota omitted property statute specified only that property omitted in whole or in part could be taxed at its full value.⁴⁶ In *Marshall Wells Co. v. Foster County*,⁴⁷ where the building had been assessed to the wrong lot, the statute was held not to allow a belated taxing of the building on the correct lot because only one assessment was permitted (on the total value of the property).⁴⁸

A year after *Marshall Wells*, the North Dakota legislature amended the statute to include buildings listed on the tax rolls in an erroneous location.⁴⁹ In *Mueller v. Mercer County*,⁵⁰ where the house had not been erroneously located, but had never been assessed to any lot, the amended omitted property statute was held to apply. The North Dakota court said that the legislature intended to fill in the statutory gaps revealed by *Marshall Wells*.⁵¹ The rea-

43. 15 N.W.2d at 7.

44. *Ibid.* "Lot 4 was not 'omitted property' for the assessor had assessed it every year"

45. 60 N.W.2d 678 (N.D. 1953).

46. The statute read:

Whenever the county auditor shall discover that taxable real or personal property has been omitted in whole or in part in the assessment of any year or years . . . he shall proceed to correct the assessments books and add such property and assess it at its full and true value.

N.D. Laws 1925, ch. 198, § 1.

47. 59 N.D. 599, 231 N.W. 542 (1930).

48. In North Dakota, the land and its improvements were valued separately before an aggregate value was set. N.D. Cent. Code § 57-02-27 (1960).

49. Now N.D. Cent. Code § 57-14-01 (1960):

[When the auditor discovers that] taxable real or personal property has been omitted in whole or in part . . . or that any building or structure has been listed and assessed against a lot or tract of land other than the true site or actual location of such building . . . [he should proceed to add it to the tax rolls].

50. 60 N.W.2d 678 (N.D. 1953).

51. The legislature stated its reason for the amendment: "Whereas the Supreme Court of North Dakota has held that a building assessed against an erroneous description does not constitute property omitted from taxation" N.D. Laws 1931, ch. 280, § 2.

soning of the North Dakota court in *Mueller* is not clear, and it leaves the current North Dakota method of assessment especially cloudy. In the first case, *Marshall Wells*, the court had said that the aggregate sum of the separate values of the land and its improvements represented one assessment. But in *Mueller*, the North Dakota court uses the reasoning of the component method of assessment,⁵² not the reasoning of the unitary method which North Dakota professes to follow. *Mueller* can be explained only by reference to the legislative mandate that there were to be no more decisions like *Marshall Wells v. Foster County*.

A slightly different problem in assessing omitted property arose in Louisiana. In *Whited v. Louisiana Tax Comm'n*,⁵³ the owner added buildings to land listed on the tax rolls as "vacant." Four years later the taxing authorities attempted to make a supplemental assessment on the improvements. Although the Louisiana statute⁵⁴ taxed realty as a whole, the assessment sheet had a separate space for the value of the improvements.⁵⁵ Ignoring the form of the assessment sheet, the Louisiana court held that because the buildings were immovables, they were part of the realty. The buildings were not omitted and they were not erroneously assessed.

They were not omitted because they were necessarily included, without mention of them, in the assessment of the lots on which they were built. They were not erroneously assessed because the only correct method of assessing immovables by nature is to include their value in the assessment of the lots on which they were built.⁵⁶

The language of the Louisiana court in *Whited* coincides closely with the expression of the New Mexico court in *Taylor v. Shaw*⁵⁷ that when improvements were not included in the assessment, the

52. 60 N.W.2d at 684-85.

53. 178 La. 877, 152 So. 552 (1934).

54. La. Rev. Stat. Ann. § 47:1958 (Supp. 1964):

The assessor, in assessing lands and lots shall take into consideration the enhanced value of the same arising from the buildings and improvements thereon

55. Except for certain counties using their own tax forms (*e.g.*, Bernalillo County), New Mexico counties do the same. The "Tax Schedule" supplied to the counties by the New Mexico State Tax Commission has spaces for separate valuations of real estate, improvements, farm and ranch equipment, livestock, etc.

56. 152 So. at 554, relying on *Delta Land & Timber Co. v. Police Jury*, 169 La. 537, 125 So. 585 (1929) (denuded pine land). See also *E. K. Wood Lumber Co. v. Whatcom County*, 5 Wash. 2d 63, 104 P.2d 752 (1940) (standing timber); *Hammond Lumber Co. v. Cowlitz County*, 84 Wash. 462, 147 Pac. 19 (1915) (logging railroad).

57. See note 27 *supra* and accompanying text.

realty was undervalued because permanently attached improvements "were at all times a part of the realty."⁵⁸

In contrast to the unitary method of valuing and assessing real property, some states, including Illinois and California, tax real estate by its components, the land and the improvements. In Illinois, the component method is set by statute,⁵⁹ but in California the state constitution⁶⁰ requires the component method. When tax officials attempt to tax improvements or land previously untaxed, the component method has caused the Illinois and California courts to reach a conclusion different from the courts in the unitary assessment states.

In *People ex rel. McDonough v. Birtman Elec. Co.*,⁶¹ an Illinois assessor taxed the land for the year 1928, but neglected to tax the building. In 1930, the county tried to collect the back taxes on the improvement.⁶² The tax on the improvement was held proper. The Illinois court described the component method of assessment, and said that if either component were omitted entirely it could be assessed as omitted property. What is impossible in other states because land and improvements are taxed as a *whole* becomes possible in Illinois by its approach to the initial step of assessment.

Two California cases, when read together, corroborate the Illinois conclusion. In *Stafford v. Riverside County*,⁶³ the county was unsuccessful in its attempt to tax additions to a hotel because the hotel had been assessed once. But in *Jenson v. Bryam*,⁶⁴ where a house had not been assessed at all, the county was permitted to levy a tax under the escaped property statute.⁶⁵

These California cases show that where there are individual assessments of land and improvements, if either is not taxed at all, it can be added to the tax roll, but if either is taxed, though undervalued, it cannot be reassessed for the undervalued years.

58. 48 N.M. at 399, 151 P.2d at 745.

59. Ill. Ann. Stat. ch. 120, § 293 (Smith-Hurd 1929), now Ill. Ann. Stat. ch. 120, §§ 524-26 (Smith-Hurd 1954).

60. Cal. Const. art. 13, § 2.

61. 359 Ill. 143, 194 N.E. 282 (1934).

62. On authority of Ill. Ann. Stat. ch. 120, § 314 (Smith-Hurd 1929), now Ill. Ann. Stat. ch. 120, § 589 (Smith-Hurd 1954), which provides:

The board of review shall, in any year, whether the year of the quadrennial assessment or not:

First:—Assess all property subject to assessment which shall not have been assessed by the assessor, and list and assess all property real or personal that may have been omitted in the assessment of any year or number of years.

63. 155 Cal. App. 2d 474, 318 P.2d 172 (1957).

64. 40 Cal. Rptr. 540 (1964).

65. Cal. Rev. & Tax. Code § 531.

The foregoing discussion of cases indicates that the method of assessment determines the application of the omitted property statutes. If improvements and land are assessed together as an entity, any unassessed improvements cannot be assessed later as "omitted property." But if land and improvements are assessed as individual components, improvements completely overlooked can be taxed later as "omitted property."

There are conflicting goals in the process of taxation. There is the desire to give the taxpayer repose once taxes have been levied and paid, but there is also the desire to make all property owners bear the burden of taxation in proportion to the actual value of their property. Unless the states enact very specific omitted property statutes, they may not realize that a choice between opposite goals is being made when the method of valuation and assessment is chosen. However, it seems that other states have attempted, consciously or unconsciously, to achieve some part of each goal by construing very narrowly the instances where a taxpayer can be liable for back taxes on unassessed realty if he has already paid some taxes on the same property.⁶⁶

The New Mexico legislature has not indicated clearly whether one goal is supreme or whether some middle ground is sought between the conflicting goals. New Mexico law is uncertain, but the balance at this time is probably in favor of repose to the taxpayer. Despite the apparently unmistakable language of the statutes, a review of cases in New Mexico and in other jurisdictions indicates (1) that realty is not "erroneously described" or "erroneously assessed" if the improvements are not included with the land, and (2) that in unitary systems providing for only one assessment of the land and its improvements, improvements are not "omitted property" if the land itself has once been assessed and taxed.

The most feasible solution to the problem of taxing improvements omitted from the original assessment would be for the New Mexico legislature to clarify the wording of the omitted property statutes. A suggested revision has been prepared.⁶⁷ Under this proposal, the phrase "real estate" in section 72-2-42 of the New

66. Illinois, permitting the back assessment of omitted components, protects its taxpayers by prohibiting recovery of taxes beyond the date of acquiring ownership of the property. Ill. Ann. Stat. ch. 120, § 702 (Smith-Hurd 1954).

California allows escaped property assessments only if the same person still owns the property, or if it was received from the person who owned the property through gift, descent, bequest or devise. Cal. Stats. 1959, ch. 1153, § 2, p. 3246.

67. Speer, Proposed Codification of the Property-Tax Statutes (undated) (mimeo.). Mr. Speer is attorney for the New Mexico State Tax Commission.

Mexico statutes⁶⁸ would be expanded to read "real estate or buildings."⁶⁹ This expansion would help; however, unless "legislative intent" were read into the revision,⁷⁰ overlooked minerals,⁷¹ standing timber, and other characteristics which increase the value of land would escape addition to the tax rolls for back assessments. The statutory revision must be broad enough to cover the many ways in which land may be increased in value (whether by construction or by the discovery of unknown attributes⁷²), yet narrow enough to eliminate the current uncertainty.

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68. Section 72-2-42 is set forth in note 11 *supra*.

69. Speer, *op. cit. supra* note 67, at § 23-3.

70. See *Mueller v. Mercer Co.*, 60 N.W. 2d 678 (N.D. 1953), note 45 *supra* and accompanying text.

71. Because minerals are assessed by the State Tax Commission, not by the county assessor (N.M. Stat. Ann. § 72-6-4 (Repl. 1961)), the tax commission's authority to assess omitted property would also require revision.

72. Of course, the unknown attributes—minerals, for example—would be taxable only from the time of discovery by the property owner.