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apportioned by county. Mammoth City **Collateral References.**
 v. Snow, 69 U. 204, 253 P. 680.

Taxation \hookrightarrow 299.
 61 C.J. Taxation §§ 684-686.

CHAPTER 7

EQUALIZATION

- ARTICLE 1. COUNTY BOARD, 59-7-1 TO 59-7-11.
 2. STATE TAX COMMISSION, 59-7-12 TO 59-7-15.

ARTICLE 1

COUNTY BOARD

- Section 59-7-1. Meetings of county board—Time for complaints.
 59-7-2. Powers of county board.
 59-7-3. Application for reduction in tax.
 59-7-4. Examination of applicant.
 59-7-5. Examination of witnesses.
 59-7-6. Assessor to attend.
 59-7-7. Change in assessment—Force and effect.
 59-7-8. Auditor ex-officio clerk of board—Notice to taxpayer.
 59-7-9. Record of changes.
 59-7-10. Appeal to state tax commission.
 59-7-11. Decision of state tax commission.

59-7-1. Meetings of county board—Time for complaints.—The board of county commissioners is the county board of equalization and must meet on the 31st day of May in each year to examine the assessment books and equalize the assessment of property in the county, including the assessment for general taxes of all cities and towns situated therein. It must continue in session for that purpose from time to time until the business of equalizing is disposed of, but not later than the 20th day of June, except as otherwise provided. All complaints regarding the assessment of property where notice of the decision of the county board of equalization thereon has not been given to the taxpayer on or prior to June 20, and all such complaints not disposed of or decided by said board on or prior to said date shall be deemed to have been denied on said date and no notice of such denial need be given. And it shall meet on the third Tuesday of January, February, March and April of each year, except in counties where the population does not exceed 2500 persons as determined by the latest decennial census, it may meet only on the third Tuesday of April of each year, at the discretion of the respective board of county commissioners of said counties thus affected to equalize valuations of personal property, the tax on which has been collected under the provisions of section 59-10-4, and failure of any such taxpayer to appear at the first meeting, of the board of equalization after assessment of his personal property is made by the county assessor shall bar him from any relief, and the valuation placed by the assessor shall stand.

History: R. S. 1898 & C. L. 1907, § 2574; C. L. 1917, § 6060x1, added by L. 1919, L. 1915, ch. 26, § 1; C. L. 1917, § 5974; L. ch. 123, § 1; R. S. 1933, 80-7-1; L. 1937, 1919, ch. 117, § 1; R. S. 1933, 80-7-1; L. ch. 102, § 1; 1941, ch. 81, § 1; C. 1943, 1937, ch. 102, § 1; 1941, ch. 81, § 1; C. 1943, 80-7-1.
 80-7-1.

Compiler's Notes.

The 1937 and 1941 amendments made various changes in text.

The reference in this section to "section 59-10-4" appeared in Code 1943 as "Sections 80-10-4."

Comparable Provisions.

Deering's Cal. Rev. and Tax. Code, § 1603 (requiring the board of supervisors to meet as county board of equalization, annually, on first Monday in July, to equalize the assessment of property on the local roll).

Idaho Code 1947, § 63-401 (board of county commissioners meets as board of equalization on fourth Monday of June in each year).

Iowa Code 1950, § 442.12 (board of supervisors constitutes county board of review and is required to adjust assessments of the several townships, cities and towns of county at regular meeting in June).

Montana Rev. Codes 1947, § 84-601 (constituting board of county commissioners as county board of equalization, and requiring it to meet on third Monday of July in each year to examine assessment book and equalize assessment of property in county).

1. Functions of board.

The board of county commissioners, when sitting as a board of equalization, frequently does county commissioners' work and equalization work. They are intermingled. They sit as a board of equalization for a few minutes and then turn to a board of county commissioners. Board of Education of Nebo School Dist. v. Jeppson, 74 U. 576, 585, 280 P. 1065.

2. Power and jurisdiction of board.

In performing its duty "to examine assessment books and equalize assessment of property in county," board has right, although it may hear evidence or not as it chooses, to act on its members' own knowledge and judgment. State ex rel. Jennings Bros. Inv. Co. v. Armstrong, 19 U. 117, 56 P. 1076.

Board has right to raise or lower assessed valuation of all property in particular district without notice to each or any owner of property therein other than that given by statute itself. State ex rel.

Jennings Bros. Inv. Co. v. Armstrong, 19 U. 117, 56 P. 1076. See 59-7-2.

Decisions from other Jurisdictions—California.

It is the purpose of uniformity of taxation that all property in the state carry its fair burden and contribute its just amount in taxation to the support of the various public bodies which levy taxes. San Bernardino County v. Way, 18 Cal. 2d 647, 117 P. 2d 354.

It is essential to the performance of governmental functions that an orderly system of assessment and collection of taxes shall be maintained, and that the amounts of the assessments be fixed with certainty in a prescribed manner and at a definite time; the California system provides a method of reviewing the values fixed by the assessor, and a tribunal to pass upon the claims of overvaluation; if that tribunal fails to properly discharge its duty, the courts may intervene, but a different situation is presented where a taxpayer fails to avail himself of the machinery provided, and fails to make timely application to, and make proof of his contentions, before the board of equalization. Montgomery Ward & Co. v. Welch, 17 Cal. App. 2d 127, 61 P. 2d 790.

Tax proceedings are in invitum and are necessarily strictly construed in favor of the taxpayer; the equalization stages of a tax proceeding are no exception to this rule. Bandini Estate Co. v. Los Angeles County, 28 Cal. App. 2d 224, 82 P. 2d 185.

Unless a tax statute provides an opportunity for a hearing of the taxpayer, at some stage of the proceedings before the tax becomes fixed, it is void under the Fourteenth Amendment to the federal Constitution. Bandini Estate Co. v. Los Angeles County, 28 Cal. App. 2d 224, 82 P. 2d 185.

Collateral References.

Taxation § 449(1).
61 C.J. Taxation §§ 928-934, 937-944.
Equalization, collection, and review, 51 Am. Jur. 681, Taxation § 741 et seq.

Power or duty of tax review or equalization boards to act after date for adjournment or closing of books, 105 A. L. R. 624.

59-7-2. Powers of county board.—The county board of equalization has power, after giving notice in such manner as it may by rule prescribe, to increase or lower any assessment contained in any assessment book, so as to equalize the assessment of the property contained therein and make the assessment conform to forty per cent of the reasonable fair cash value

of such property. Said board may remit or abate the taxes of any indigent person to an amount not exceeding \$10 for the current year.

History: R. S. 1898, § 2575; L. 1901, ch. 90, § 1; C. L. 1907, § 2575; C. L. 1917, § 5975; R. S. 1933 & C. 1943, 80-7-2; L. 1947, ch. 110, § 1.

Compiler's Note.

The 1947 amendment made no substantial change in section.

Comparable Provision.

Deering's Cal. Rev. and Tax. Code, § 1605 (after giving notice, county board may increase or lower any assessment on local roll in order to equalize assessment of property on local roll); § 1606 (but the board may neither raise nor lower the entire local roll).

Cross-Reference.

See also Const. Art. XIII, § 2.

1. Validity.

Provision of former statute, whereby county board of equalization was authorized to "remit or abate taxes of any insane, idiotic, infirm, or indigent person to amount not exceeding ten dollars for current year," held void as in conflict with Const. Art. XIII, §§ 2 and 3, as such sections read at time statute was enacted. State ex rel. Richards v. Armstrong, 17 U. 166, 53 P. 981, 41 L. R. A. 407.

2. Extent of board's powers.

This section must be construed as meaning that county boards of equalization may raise or lower assessed valuation of any class of property in their respective counties for city taxes, as well as valuation for county or other taxes. Salt Lake City v. Armstrong, 15 U. 472, 476, 49 P. 641, followed in State v. Armstrong, 19 U. 117, 56 P. 1076.

3. Notice.

Notice, provided for by this section, is required only in cases where individual assessments are affected and not in those

involving property of entire district or locality. State ex rel. Jennings Bros. Inv. Co. v. Armstrong, 19 U. 117, 124, 56 P. 1076, applying R. S. 1898, § 2575.

4. Determination of propriety of assessment.

Whether board assessed property at too high or too low a valuation was not a judicial question but was for determination of board. Union Portland Cement Co. v. Morgan County, 64 U. 335, 230 P. 1020.

5. Abatement of tax.

Where county board of equalization orders abatement of certain corporation tax, warrant of county treasurer based on such order is fair on its face, even though that board had not authorized board of county commissioners to abate tax. Board of Education of Nebo School Dist. v. Jeppson, 74 U. 576, 585, 280 P. 1065.

Decisions from other Jurisdictions—California.

Board of equalization acts in a judicial capacity and can only change the values on evidence given before it; the board has no power to assess or reassess the property on the roll prepared by the assessor. Rancho Santa Margarita v. San Diego County, 135 Cal. App. 134, 26 P. 2d 716.

Collateral References.

Taxation—449(1).
61 C.J. Taxation § 930.

Action of board of equalization as affecting right to attack assessment on ground of assessor's fraud, 9 A. L. R. 1284.

Notice to property owners of increase in assessment or valuation by board of equalization or review, 84 A. L. R. 197.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 A. L. R. 597.

59-7-3. Application for reduction in tax.—No reduction must be made in the valuation of property unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by his oath, or shall appear before the board and show facts upon which it is claimed such reduction should be made.

History: R. S. 1898 & C. L. 1907, § 2576; C. L. 1917, § 5976; R. S. 1933 & C. 1943, 80-7-3.

Comparable Provisions.

Deering's Cal. Rev. and Tax. Code, § 1607 (requiring verified, written application for reduction in assessment).

Montana Rev. Codes 1947, § 84-603 (similar).

1. Operation and effect of section.

This section and section immediately succeeding refer to reductions on application of individuals and not to reductions made on classes of property within certain

localities designated or described by board, and latter reductions may be made without written application, on such reasonable examination and investigation as board may make according to its best judgment. *Salt Lake City v. Armstrong*, 15 U. 472, 49 P. 641.

Collateral References.

Taxation \Rightarrow 449(4).
61 C.J. Taxation \S 927.

Right of taxpayer to relief from over-assessment of his property as affected by overassessment of the other property within the district, 87 A. L. R. 1296.

59-7.4. Examination of applicant.—Before the board grants the application or makes any reduction applied for, it may examine on oath the person or agent making the application touching the value of the property of such person. No reduction must be made unless such person or the agent making the application, if required, attends and answers all questions pertinent to the inquiry.

History: R. S. 1898 & C. L. 1907, \S 2577; C. L. 1917, \S 5977; R. S. 1933 & C. 1943, 80-7-4.

Comparable Provisions.

Deering's Cal. Rev. and Tax. Code, \S 1608 (requiring examination, on oath, before any reduction is made).

Montana Rev. Codes 1947, \S 84-604 (the board "must" examine on oath the person or agent making the application; words "if required" are omitted).

1. Procedure for making reduction.

This section and section immediately preceding refer to reductions on application of individuals and not to reductions made on classes of property within certain localities designated or described by board, and latter reductions may be made without written application, on such reasonable examination and investigation as board may make according to its best judgment. *Salt Lake City v. Armstrong*, 15 U. 472, 49 P. 641.

Collateral References.

Taxation \Rightarrow 449(4).
61 C.J. Taxation \S 927.

59-7.5. Examination of witnesses.—Upon the hearing of the application the board may subpoena such witnesses, and hear and take such evidence in relation to the subject pending, and in its discretion it may deem proper.

History: R. S. 1898 & C. L. 1907, \S 2578; C. L. 1917, \S 5978; R. S. 1933 & C. 1943, 80-7-5.

Comparable Provisions.

Deering's Cal. Rev. and Tax. Code, \S 1609 (board may subpoena witnesses and take evidence).

Montana Rev. Codes 1947, \S 84-606 (substantially identical).

Cross-Reference.

Contempt, 78-32-1 et seq.

Collateral References.

Taxation \Rightarrow 449(4).
61 C.J. Taxation \S 927.

Power of board of tax review to receive evidence as to assessable value without notice to taxpayer, 113 A. L. R. 990.

59-7.6. Assessor to attend.—During the session of the board the assessor and any deputy whose testimony is needed must be present, and may make any statement or introduce and examine witnesses on questions before the board.

History: R. S. 1898 & C. L. 1907, \S 2579; C. L. 1917, \S 5979; R. S. 1933 & C. 1943, 80-7-6.

the California Political Code. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, 517.

1. In general.

This section is substantially the same as

2. Order of board.

This section does not require order of county board of equalization, directing

assessment of certain corporation to be abated, to be certified. Board of Education of Nebo School Dist. v. Jeppson, 74 U. 576, 280 P. 1065.

Collateral References.

Taxation ⇨ 449(4).
61 C.J. Taxation § 927.

59-7-7. Change in assessment—Force and effect.—The county board of equalization must use all information it may gain from the records of the county recorder or elsewhere in equalizing the assessment of the property in the county, and may require the assessor to enter upon the assessment book any taxable property that has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made by the assessor before the delivery of the assessment book to the county treasurer.

History: R. S. 1898 & C. L. 1907, § 2580; C. L. 1917, § 5980; R. S. 1933 & C. 1943, 80-7-7.

clerk in presence of and under direction of the board, having same force and effect as if made and entered by assessor before completion of assessment roll).

Comparable Provision.

Idaho Code 1947, § 63-404 (all changes in assessments and new assessments must be entered in assessment roll by board-

Collateral References.

Taxation ⇨ 449(1).
61 C.J. Taxation § 930.

59-7-8. Auditor ex-officio clerk of board—Notice to taxpayer.—During its sessions the county board of equalization may direct the assessor to assess any taxable property that has escaped assessment or to add to the amount, number or quantity of property when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time cancelling previous entries) when any assessment made by him is deemed by the board so incomplete as to render doubtful the collection of the tax; but the county auditor, who is hereby made the clerk of the board of equalization, must notify all persons interested of the day fixed for the investigation of the matter, by letter deposited in the post office, postpaid, and addressed to the person interested, at least five days before action is taken.

History: R. S. 1898 & C. L. 1907, § 2581; C. L. 1917, § 5981; R. S. 1933 & C. 1943, 80-7-8.

2. Resolutions of board.

This section does not require resolution or communication of board to assessor to be certified, as, for example, a resolution directing assessor to abate an assessment. Board of Education of Nebo School Dist. v. Jeppson, 74 U. 576, 584, 280 P. 1065.

1. Effect of section.

By this section the auditor is made ex officio the clerk of the board of equalization. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513.

Collateral References.

Taxation ⇨ 449(1).
61 C.J. Taxation § 938.

59-7-9. Record of changes.—The county auditor must record, in a book to be kept for that purpose, all changes, corrections and orders made by the board; and during its session, or as soon as possible after its adjournment, must enter upon the assessment book all changes and corrections made by the board, and on or before the first Monday of July must affix his affidavit thereto, subscribed by him, as follows:

I,, do swear that, as county auditor of county, I have kept correct minutes of all acts of the county board of equalization

touching alterations in the assessment book, that all alterations agreed to or directed to be made have been made and entered in the book, and that no changes or alterations have been made therein except those authorized.

History: R. S. 1898 & C. L. 1907, § 2582; C. L. 1917, § 5982; R. S. 1933 & C. 1943, 80-7-9.

1. Purpose of book.

One purpose of the book required by this section is to enable the taxpayer to have means of information of what has been done by the board of equalization. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513.

2. Duty to make record.

Sometimes the county clerk makes a record of proceedings of board of equalization. The county auditor is generally called in to make such records. *Board of Education of Nebo School Dist. v. Jeppson*, 74 U. 576, 585, 280 P. 1065.

3. Affidavits.

Failure of assessor to attach his affidavit to assessment rolls is not a fatal defect, because of 59-5-30, but it is otherwise with respect to auditor's affidavit. In latter case, omission of affidavit is fatal. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, following California rule. Followed in *Equitable Life & Casualty Ins. Co. v. Schoewe*, 105 U. 569, 144 P. 2d 526; *Peterson v. Ogden City*, 111 U. 125, 176 P. 2d 599, 601.

Tax deed issued to county is invalid, where county auditor fails to affix his affidavit to assessment rolls. *Bozievich v. Slechta*, 109 U. 373, 166 P. 2d 239, 240, which was, however, the result of stipulation of parties.

Where defendants in suit to quiet title plead a tax title, but fail to allege that the auditor's affidavits required by this section were executed and attached to the assessment roll, a plea as to perform-

ance of at least two of the essentials in the statutory proceedings is lacking. *Tree v. White*, 110 U. 233, 171 P. 2d 398, following *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513.

Although failure to make or subscribe auditor's affidavit will not affect validity of assessment, that affidavit is condition precedent to valid tax deed from county. *Jenkins v. Morgan*, 113 U. 534, 196 P. 2d 871, following *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513; *Tree v. White*, 110 U. 233, 171 P. 2d 398.

Uncontradicted testimony of county treasurer and his deputy that they examined all assessment rolls for years in question and failed to find any auditor's affidavit attached thereto or any appearance of any such affidavit so attached, was sufficient to support finding of trial court that there were no auditor's affidavits attached to such assessment rolls, and consequently tax deeds from county founded upon those assessments were invalid and did not convey county's interest in lands involved, notwithstanding 59-10-36. *Jenkins v. Morgan*, 113 U. 534, 196 P. 2d 871.

Tax title founded on assessment unsupported by auditor's affidavits is fatally defective. *Sperry v. Tolley*, 114 U. 303, 199 P. 2d 542, citing cases, supra.

In action to quiet title, where defendant obtained tax sale deed from county based on 1930 treasurer's sale, but neither of the affidavits required by this section or 59-8-7 were attached to the assessment roll for 1930, defendant's tax title was defective. *Valley Inv. Co. v. Los Angeles & S. L. R. Co.*, — U. —, 225 P. 2d 722.

Collateral References.

Taxation—449(1).
61 C.J. Taxation § 941.

59-7-10. Appeal to state tax commission.—Any person aggrieved and dissatisfied with the decision of the county board of equalization in relation to the assessment of any property in which he has an interest may appeal from such decision to the state tax commission by filing with the county auditor a notice of appeal, in duplicate, within five days after the final action of the county board, which notice shall specify the grounds of complaint. The auditor shall forthwith transmit one of said notices to the state tax commission, and shall certify and transmit to the tax commission the minutes of the proceedings of the county board of equalization pertaining to the matter in which the order or decision complained of was rendered and all documentary evidence received in such proceeding, and a statement of such testimony heard in connection

therewith as has been preserved. Upon receipt of such notice of appeal and record, the state tax commission shall set a date for the hearing of the same and shall notify the taxpayer and the county auditor of the time and place so fixed. At the hearing on said appeal the tax commission may admit additional evidence and make such order as it deems just and proper, and make such correction or change in the assessment or order of the county board of equalization as it may deem proper. Every decision, order or assessment made by the tax commission upon such appeal shall be final and shall have the same force and effect as a similar order, decision or assessment made by the county board of equalization.

History: C. L. 1917, § 5981x, added by L. 1931, ch. 53, § 1; R. S. 1933 & C. 1943, 80-7-10.

State Tax Comm., 88 U. 219, 223, 50 P. 2d 418, rehearing denied 88 U. 228, 54 P. 2d 1214.

1. Operation and effect of section.

This section confers quasi-judicial duties and functions upon tax commission. County Board of Equalization v. State Tax Comm., 88 U. 219, 224, 50 P. 2d 418, rehearing denied 88 U. 228, 54 P. 2d 1214.

2. Review of decision of tax commission.

The last sentence of this section does not prevent a review of the decision of tax commission by writ of review, where such decision, order or ruling was in excess of or beyond its jurisdiction, and as such tribunal exercises both administrative and quasi-judicial functions and powers, this means every decision, ruling, or order which materially affects the substantial rights of the applicant for the writ. County Board of Equalization v.

3. Power of tax commission on appeal.

Under this section, state tax commission is authorized to cancel, vacate, or change an assessment when, upon a proper showing, it has been determined that the assessment should be so cancelled, vacated, or changed. County Board of Equalization v. State Tax Comm., 88 U. 219, 226, 50 P. 2d 418, rehearing denied 88 U. 228, 54 P. 2d 1214.

Collateral References.

Taxation ⇨ 449(5).
61 C.J. Taxation § 945.

Who is aggrieved within statutes providing remedies in tax cases, 74 A. L. R. 1221.

59-7-11. Decision of state tax commission.—The state tax commission shall decide all appeals taken pursuant to the preceding section not later than the last day in July, and shall forthwith report to the county auditor its decision, order or assessment, who shall make all changes necessary to comply with the same.

History: C. L. 1917, § 5981x1, added by L. 1931, ch. 53, § 1; R. S. 1933 & C. 1943, 80-7-11.

Collateral References.

Taxation ⇨ 449(5).
61 C.J. Taxation § 945.

ARTICLE 2

STATE TAX COMMISSION

Section 59-7-12. *Time for.

59-7-13. Investigations by tax commission—Assessment of escaped property—Increase or decrease of assessed valuation—Correction of assessed valuation.

59-7-14. Equalization based on reports of county auditor.

59-7-15. Statement of equalization to be sent county auditors.

59-7-12. Time for.—If the owner of any property assessed by the state tax commission is dissatisfied with the assessment made by it, such owner may, between the third Monday in May and the second Monday in June,

apply to the commission to have the same corrected in any particular and it shall set a time for hearing such objections and may correct and increase or lower any assessment made by it, so as to equalize the same with the assessment of other property in the state.

History: R. S. 1898 & C. L. 1907, § 2563; L. 1909, ch. 63, § 1; C. L. 1917, § 5926; L. 1931, ch. 53, § 1; R. S. 1933 & C. 1943, 80-7-12.

1. Necessity for protest.

Under this section, contention that assessment of personal property was fraudulent will not be considered, where taxpayer did not protest valuation before commencing action. *Crystal Car Line v. State Tax Comm.*, 110 U. 426, 174 P. 2d 984, 991.

2. Power of commission to raise or lower valuation.

Former state board of equalization held to have had jurisdiction and author-

ity, if necessary for purpose of equalization, either to raise or lower total valuation of property of any county, fixed by county board and assessor, even though it might by such action raise or lower aggregate valuation of all counties in state. *State v. Thomas*, 16 U. 86, 50 P. 615.

3. Mandamus.

This section does not warrant issuance of mandamus to commission to compel reapportionment. *Mammoth City v. Snow*, 69 U. 204, 253 P. 680.

Collateral References.

Taxation \Rightarrow 446½.
61 C.J. Taxation § 962.

59-7-13. Investigations by tax commission—Assessment of escaped property—Increase or decrease of assessed valuation—Correction of assessed valuation.—Each year the state tax commission shall conduct an investigation throughout each county of the state to determine whether all property subject to taxation is on the assessment rolls, and whether such property is being assessed at 40 per cent of its reasonable fair cash value. When, after any such investigation, it is found that any property which is subject to taxation is not assessed, then the state tax commission shall direct the county assessor, the county board of equalization or the county auditor, as it may determine, to enter the assessment of such escaped property. If it is found that any property in any county is not being assessed at 40 per cent of its reasonable fair cash value, the state tax commission shall, for the purpose of equalizing the value of property in the state, increase or decrease the assessed valuation of such property in order to enforce the assessment of all property subject to taxation upon the basis of 40 per cent of its reasonable fair cash value, and shall direct the county assessor, the county board of equalization or the county auditor, as it may determine, to correct the assessed valuation of such property in the manner which the state tax commission shall prescribe. The county assessors, county boards of equalization and county auditors shall make such increases or decreases as may be required by the state tax commission to make the assessment of all property within the county conform as nearly as may be to 40 per cent of the reasonable fair cash value.

History: R. S. 1898, § 2585; L. 1899, ch. 68, § 1; C. L. 1907, § 2585; L. 1909, ch. 63, § 1; 1911, ch. 83, § 1; 1917, ch. 59, § 1; C. L. 1917, § 5985; L. 1931, ch. 53, § 1; R. S. 1933 & C. 1943, 80-7-13; L. 1947, ch. 111, § 1.

Compiler's Note.

The 1947 amendment completely rewrote this section. The amendment contained a section 2, which was compiled as section 80-7-13.10, Code 1943, Supp., and which provided as follows: "This act shall not

be construed as a limitation upon the authority and power of the state tax commission to effect equalization as otherwise provided under the laws of this state, but shall be considered as an additional method that may be used to aid in such equalization."

1. Power to raise or lower valuation.

Former state board of equalization held to have had jurisdiction and authority, if necessary for purpose of equaliza-

tion, either to raise or lower total valuation of property of any county, fixed by county board and assessor, even though it might by such action raise or lower aggregate valuation of all counties in state. *State v. Thomas*, 16 U. 86, 50 P. 615.

Collateral References.

Taxation \Leftrightarrow 446½.
61 C.J. Taxation § 962.

59-7-14. Equalization based on reports of county auditor.—During the month of July the state tax commission shall examine and compare the reports of the county auditors and shall equalize the assessment of the taxable property of the several counties of the state for the purpose of taxation.

History: R. S. 1898, § 2560; L. 1899, ch. 68, § 1; 1907, ch. 9, § 1; C. L. 1907, § 2560; L. 1909, ch. 63, § 1; C. L. 1917, § 5923; L. 1919, ch. 114, § 1; 1931, ch. 53, § 1; R. S. 1933 & C. 1943, 80-7-14.

Collateral References.

Taxation \Leftrightarrow 446½.
61 C.J. Taxation § 962.

59-7-15. Statement of equalization to be sent county auditors.—When the equalization among the several counties is completed, the state tax commission must transmit to each county auditor and to the state auditor a statement of the changes made by it in the assessment books of each county or any assessment contained therein, which is prima facie evidence of the regularity of all proceedings of the tax commission resulting in the action which is the subject-matter of the statement.

History: R. S. 1898 & C. L. 1907, § 2587; C. L. 1917, § 5987; L. 1931, ch. 53, § 1; R. S. 1933 & C. 1943, 80-7-15.

Collateral References.

Taxation \Leftrightarrow 446½.
61 C.J. Taxation § 962.

CHAPTER 8

COUNTY AUDITORS' DUTIES

- Section 59-8-1. Total property valuation—Duty to add and enter on record.
- 59-8-2. Entering tax in cities and towns separately.
- 59-8-3. Transmittal of aggregates to state tax commission.
- 59-8-4. Changes ordered by state tax commission, duty to make.
- 59-8-5. Total aggregates as corrected by tax commission, duty to add and enter.
- 59-8-6. Statement of aggregates to be transmitted to tax commission and state auditor.
- 59-8-7. Assessment roll to be delivered to county treasurer.
- 59-8-8. County treasurer to be charged with amount of taxes levied.
- 59-8-9. Termination of treasurer's term of office, duty of auditor.
- 59-8-10. Verification of all statements.

59-8-1. Total property valuation—Duty to add and enter on record.—The county auditor, immediately upon the completion of the work of the county board of equalization, shall proceed to add the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book. In the appropriate column the total acreage of the county shall be shown.

History: R. S. 1898 & C. L. 1907, § 2599; C. L. 1917, § 5999; R. S. 1933 & C. 1943, 80-8-1.

Comparable Provisions.

Deering's Cal. Rev. and Tax. Code, § 1646 (similar, except as to showing "total acreage").

Idaho Code 1947, § 63-1001 (requiring county auditor to compute amount of state tax and amount of county tax levied on the total equalized value; must add up the several tax columns and enter total

of each column in the real property assessment roll).

Montana Rev. Codes 1947, § 84-4001 (similar; "county clerk" performs such duties).

Cross-Reference.

County auditor, 17-19-1 et seq.

Collateral References.

Counties ⇄ 91.
20 C.J.S. Counties § 140.

59-8-2. Entering tax in cities and towns separately.—The general city and town tax of each city and town shall be extended on the assessment book by the county auditor, in a separate column, at the rate certified by the governing body of the city or town, at the time the state and county taxes are extended, and the whole tax shall be carried into a column of aggregates, and shall be collected by the county treasurer at the time and in the manner provided by law for collecting state and county taxes.

History: R. S. 1898, § 2691; L. 1903, ch. 132, § 1; C. L. 1907, § 2691; C. L. 1917, § 6105; R. S. 1933 & C. 1943, 80-8-2.

Collateral References.

Counties ⇄ 91.
20 C.J.S. Counties § 140.

59-8-3. Transmittal of aggregates to state tax commission.—The county auditor shall, on or before the first Monday in July of each year, prepare from the assessment book of that year, as corrected by the county board of equalization, a statement showing in separate columns:

- (1) The total value of all property.
- (2) The value of real estate, including patented mining claims, stated separately.
- (3) The value of the improvements thereon.
- (4) The value of personal property exclusive of money.
- (5) The number of acres of land and the number of patented mining claims, stated separately.
- (6) The amount of taxes remitted.

As soon as such statement is prepared the county auditor shall transmit the same by mail to the state tax commission.

History: R. S. 1898 & C. L. 1907, §§ 2600, 2601; C. L. 1917, §§ 6000, 6001; R. S. 1933 & C. 1943, 80-8-3.

Comparable Provision.

Deering's Cal. Rev. and Tax. Code, § 1649 (requiring auditor to transmit one valuation statement to state controller and one to state board of equalization).

59-8-4. Changes ordered by state tax commission, duty to make.—The state tax commission shall on or before the first day of August or within 30 days after the county auditors of the state have filed their report with the state tax commission as provided for in section 59-8-3, Utah Code Annotated 1953, each year transmit to the county auditor a statement of the changes made by it in the assessment book of the county, as provided for in paragraph 8, section 59-5-46, Utah Code Annotated 1953.

As soon as the county auditor receives from the state tax commission a statement of the changes made by it in the assessment book of the

county, or of any assessment contained therein, he must make the corresponding changes in the assessment book, by entering the same in a column provided with the proper heading in the assessment book, counting any fractional sum when more than fifty cents as one dollar and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fractions of a dollar; but he must in all cases disregard any action of the county board of equalization or state tax commission which is prohibited by law.

History: R. S. 1898 & C. L. 1907, § 2602; C. L. 1917, § 6002; R. S. 1933, 80-8-4; L. 1941, ch. 82, § 1; C. 1943, 80-8-4.

Compiler's Notes.

The 1941 amendment added the first paragraph of text.

The references in this section to "section 59-8-3, Utah Code Annotated 1953" and "section 59-5-46, Utah Code Annotated 1953" appeared in Code 1943 as "Section 80-8-3, Revised Statutes of Utah, 1933" and "Section 80-5-46, Revised Statutes of Utah, 1933" respectively.

Comparable Provision.

Montana Rev. Codes 1947, § 84-4004 (requiring county clerk, as soon as he receives from state board of equalization a statement of changes made in assessment books or in any assessment, to make corresponding changes in assessment books).

1. In general.

This section is substantially the same as the section of the California Political Code. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, 517.

Collateral References.

Counties↔91.
20 C.J.S. Counties § 140.

59-8-5. Total aggregates as corrected by tax commission, duty to add and enter.—The county auditor shall then compute, and enter in a separate money column in the assessment book, the aggregate sum in dollars and cents, rejecting the fractions of a cent, to be paid as taxes on the property therein enumerated; provided, that taxes levied only on a certain kind or class of property for a special purpose, other than for state, county, city, town and school purposes, etc., shall be separately set out, and he shall foot up the column showing the total amount of such taxes, and the column of total value of property in the county, as corrected by the state tax commission.

History: R. S. 1898 & C. L. 1907, § 2603; L. 1911, ch. 116, § 1; C. L. 1917, § 6003; R. S. 1933 & C. 1943, 80-8-5.

Comparable Provision.

Montana Rev. Codes 1947, § 84-4005 (similar duties to be performed by county clerk).

1. In general.

This section is substantially the same as the section of the California Political Code. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, 517.

Collateral References.

Counties↔91.
20 C.J.S. Counties § 140.

59-8-6. Statement of aggregates to be transmitted to tax commission and state auditor.—The county auditor shall, on or before the second Monday of September of each year, prepare from the assessment rolls of such year, as corrected by the county board of equalization and by the state tax commission, a statement showing the amount and value of all property in the county, as classified by the county assessment rolls, and the value of each class; the total amount of taxes remitted by the county board of equalization; the state's share of such taxes remitted; the county's share of such taxes remitted; the rate of county taxes, and such other information as the state auditor may request. Said statement shall be

made in duplicate, upon blanks furnished by the state auditor, and as soon as prepared shall be transmitted, by mail, one copy to the state auditor and one copy to the state tax commission.

History: L. 1915, ch. 25, § 1; C. L. 1917, § 6004; R. S. 1933 & C. 1943, 80-8-6. Code. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, 517.

1. In general.

This section is substantially the same as the section of the California Political

Collateral References.

Counties ⇨ 91.
20 C.J.S. Counties § 140.

59-8-7. Assessment roll to be delivered to county treasurer.—On or before the third Monday of September, the county auditor must deliver the corrected assessment roll to the county treasurer, with an affidavit attached thereto and subscribed by him as follows:

I, _____ county auditor of the county of _____, do swear that I received the accompanying assessment roll of the taxable property of the county from the assessor, and that I have corrected it and made it conform to the requirements of the county board of equalization and state tax commission; that I have reckoned the respective sums due as taxes and have added up the columns of valuations, taxes and acreage as required by law.

History: L. 1915, ch. 25, § 1; C. L. 1917, § 6006; R. S. 1933 & C. 1943, 80-8-7.

U. 569, 144 P. 2d 526; *Petterson v. Ogden City*, 111 U. 125, 176 P. 2d 599, 601.

Comparable Provisions.

Idaho Code 1947, § 63-1003 (requiring county auditor, on or before first Monday of November in each year, to deliver real property assessment roll to tax collector, with affidavit subscribed by him in the assessment roll).

Montana Rev. Codes 1947, § 84-4006 (county clerk must deliver original assessment book to county treasurer, on or before third Monday of October, with affidavit by him subscribed).

When the auditor finally delivers the assessment roll to the treasurer, it is required to be correct and complete. Without the final auditor's affidavit of authentication there is a fatal omission. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, following California rule.

Where defendants in suit to quiet title plead a tax title, but fail to allege that the auditor's affidavits required by this section were executed and attached to the assessment roll, a plea as to performance of at least two of the essentials in the statutory proceedings is lacking. *Tree v. White*, 110 U. 233, 171 P. 2d 398, following *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513.

1. In general.

This section is substantially the same as the section of the California Political Code. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, 517.

Although failure to make or subscribe auditor's affidavit will not affect validity of assessment, that affidavit is condition precedent to valid tax deed from county. *Jenkins v. Morgan*, 113 U. 534, 196 P. 2d 871, following *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, and *Tree v. White*, 110 U. 233, 171 P. 2d 398.

2. Affidavits.

Failure of assessor to attach his affidavit to assessment rolls is not a fatal defect, because of 59-5-30, but it is otherwise with respect to auditor's affidavit. In latter case, omission of affidavit is fatal to tax title. Failure of the statute to require the auditor to recite all of the details of manual delivery of the assessment rolls prepared by the assessor cannot operate to excuse the auditor from authenticating the assessment rolls and verifying the correctness and completeness. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, following California rule. Followed in *Equitable Life & Casualty Ins. Co. v. Schoewe*, 105

Uncontradicted testimony of county treasurer and his deputy that they examined all assessment rolls for years in question and failed to find any auditor's affidavit attached thereto or any appearance of any such affidavit so attached, was sufficient to support finding of trial court that there were no auditor's affidavits attached to such assessment rolls, and consequently tax deeds from county founded upon those assessments were invalid and did not convey county's inter-

est in lands involved, notwithstanding 59-10-36. *Jenkins v. Morgan*, 113 U. 534, 196 P. 2d 871.

Tax title founded on assessment unsupported by auditor's affidavits is fatally defective. *Sperry v. Tolley*, 114 U. 303, 199 P. 2d 542, citing cases, supra.

In action to quiet title, where defendant obtained tax sale deed from county based on 1930 treasurer's sale, but nei-

ther of the affidavits required by this section or 59-7-9 were attached to the assessment roll for 1939, defendant's tax title was defective. *Valley Inv. Co. v. Los Angeles & S. L. R. Co.*, — U. —, 225 P. 2d 722.

Collateral References.

Counties—91.
20 C.J.S. Counties § 140.

59-8-8. County treasurer to be charged with amount of taxes levied.—

On delivering the assessment book to the county treasurer, the county auditor must charge the treasurer with the full amount of taxes levied, except the taxes of car companies and automobiles, motor stages, motor transports and trailers employed in common-carrier business.

History: R. S. 1898, § 2605; L. 1901, ch. 126, § 1; C. L. 1907, § 2605; C. L. 1917, § 6005; R. S. 1933 & C. 1943, 80-8-8.

Comparable Provision.

Montana Rev. Codes 1947, § 84-4007 (on delivering original assessment book to county treasurer, the county clerk must charge the treasurer with the full amount of taxes levied).

1. In general.

This section is substantially the same as the section of the California Political Code. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, 517.

Collateral References.

Counties—91.
20 C.J.S. Counties § 140.

59-8-9. Termination of treasurer's term of office, duty of auditor.—

If the assessment book or the delinquent tax list is transferred from one treasurer to another, the county auditor must credit the one and charge the other with the amount of taxes then outstanding.

History: R. S. 1898 & C. L. 1907, § 2609; C. L. 1917, § 6008; R. S. 1933 & C. 1943, 80-8-9.

Comparable Provision.

Montana Rev. Codes 1947, § 84-4009 (if original assessment book or delinquent tax list is transferred from one collector to another, the county clerk must credit the one and charge the other with amount then outstanding on tax book).

1. In general.

This section is substantially the same as the section of the California Political Code. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, 517.

Collateral References.

Counties—91.
20 C.J.S. Counties § 140.

59-8-10. Verification of all statements.—The county auditor must verify all statements made by him under the provisions of this title by his affidavit attached thereto.

History: R. S. 1898 & C. L. 1907, § 2608; C. L. 1917, § 6007; R. S. 1933 & C. 1943, 80-8-10.

Code. *Telonis v. Staley*, 104 U. 537, 144 P. 2d 513, 517.

Collateral References.

Counties—91.
20 C.J.S. Counties § 140.

1. In general.

This section is substantially the same as the section of the California Political

CHAPTER 9

LEVIES

- ARTICLE 1. STATE LEVY, 59-9-1 TO 59-9-5.
2. COUNTY LEVY, 59-9-6.
3. CITY AND TOWN LEVY, 59-9-7.

4. EXCESS LEVY FORBIDDEN, 59-9-8 to 59-9-10.
5. COLORADO RIVER PROJECT, 59-9-11, 59-9-12.
6. CITY, TOWN AND COUNTY LIQUOR CONTROL FUND, 59-9-13.

ARTICLE 1

STATE LEVY

- Section 59-9-1. Determination of rate by state tax commission—Transmission of rate to county and state auditors.
- 59-9-2. For district school and equalization purposes.
- 59-9-3. Contributions by school districts.
- 59-9-4. Determination by tax commission of minimum rate of levy—State's contribution to cost of minimum school program—Matters to be considered by tax commission—Transmission of rate by tax commission to auditors.
- 59-9-5. Rates fixed by state tax commission a valid levy.

59-9-1. Determination of rate by state tax commission—Transmission of rate to county and state auditors.—During the first week in August of each year the state tax commission shall determine the rate of state tax to be levied and collected upon the assessed valuation of all property in the state sufficient to raise the amount of revenue specified to be raised by the legislature for general state purposes. Such rate in no case shall exceed 2.4 mills on each dollar of assessed valuation of tangible property in the state. The tax commission shall immediately thereafter transmit to the county auditor of each county and to the state auditor a statement of such rate, and upon its receipt the county auditor shall, in writing, notify the state tax commission of the receipt thereof.

History: R. S. 1898 & C. L. 1907, § 2588; L. 1909, ch. 63, § 1; 1915, ch. 111, § 1; C. L. 1917, § 5988; L. 1931, ch. 38, § 1; R. S. 1933 & C. 1943, 80-9-1; L. 1947, ch. 114, § 1.

Compiler's Note.

The 1947 amendment completely rewrote section.

Cross-References.

Constitutional provisions, Const. Art. XIII, § 7.

Franchise tax, 59-13-1 et seq.

Income tax, 59-14-1 et seq.

1. In general.

The provisions of this chapter, when read together with other provisions of this title, are sufficient to carry out the constitutional mandate that the legislature shall prescribe by law such regulations as will secure a just valuation for taxation of property. If all of such provisions are followed, all property will bear an equal burden of taxation in proportion to its value. *Crystal Car Line v. State Tax Comm.*, 110 U. 426, 174 P. 2d 984, 990.

2. Powers of state tax commission.

Within time limit state tax commission

may correct errors in making apportionment. *Rich County v. Bailey*, 47 U. 378, 154 P. 773.

3. Valuation of property.

This provision, together with others, is sufficient to carry out the constitutional mandate that the legislature shall prescribe by law such regulations as will secure a just valuation for taxation of property. If these provisions are followed, all property will bear an equal burden of taxation in proportion to its value. *Crystal Car Line v. State Tax Comm.*, 110 U. 426, 174 P. 2d 984, 990.

Collateral References.

Taxation—305.

61 C.J. Taxation § 694.

Levy and assessment, 51 Am. Jur. 614, Taxation § 647 et seq.

Computation of tax upon conveyance to mortgagee upon foreclosure, or upon direct conveyance by mortgagor to mortgagee, 153 A. L. R. 586.

Treatment of surplus in making tax levy under budget, 126 A. L. R. 891.

59-9-2. For district school and equalization purposes.—During the first week in August the state tax commission shall ascertain from the state superintendent of public instruction the number of classroom units and the number of pupils in average daily attendance in each school district in the state of Utah for the preceding school year, and the monies necessary for the cost of the operation and maintenance of the minimum school program of the state of Utah for the school fiscal year beginning July 1st preceding. The commission shall then ascertain the amounts of all surpluses in the uniform school fund as of July 1st next preceding, available for the operation and maintenance of such program, and shall estimate the anticipated income to such fund available for such purposes for the current school year from all sources, including revenues from taxes on income or from taxes on intangible property pursuant to section 3, Article XIII of the Constitution of the state of Utah.

(1) The state tax commission shall then determine the rate of levy on the assessed valuation of tangible property in the school district having the highest assessed valuation per child in average daily attendance for the preceding school year that would by (be) necessary to raise the total cost for that district of the basic state-supported school program as determined under section 53-7-5, Utah Code Annotated 1953, as amended. This rate of levy shall be the uniform minimum local levy for school purposes to be levied by each of the various school districts. Each county auditor shall be notified by the state tax commission as to such levy, to which shall be added such additional amount, if any, due to local under-valuation as hereinafter provided. The auditor shall inform this board of county commissioners as to the amount of such levy. The board of county commissioners shall at the time and in the manner provided by law make such levy upon the taxable property in the school district, together with such further levies for school purposes as may be required by each school district to pay the costs of programs in excess of the minimum school program.

(2) There shall then be computed for each of the various other districts the difference between the amount which the uniform minimum local levy will raise on the assessed valuation of all tangible property within the district, and the total cost of the basic state-supported school program within the district. This difference, if any, shall be apportioned from the uniform school fund to each such school district as the basic contribution of the state to the minimum school program for such district, subject to the following conditions:

(3) Before any such apportionment is made the state tax commission shall determine the percentage of full value in money at which all tangible property in each school district is assessed. Where the local assessed valuation in any such district shall be less than such standard ratio of local assessment to value in money as is prescribed by law, there shall be deducted from the full minimum school-room unit apportionment as determined above an equalization amount for under-valuation determined by multiplying the difference in valuation expressed in dollars by the sum of the state school levy and the uniform minimum local levy for school purposes.

(4) In such event the commission shall then determine the rate of levy required to produce revenue equal to such deduction for under-valuation when levied on each dollar of assessed valuation of the tangible property in the district, and it shall add such additional rate of levy to the uniform minimum local levy for such district, which combined rate of levy shall be certified to the county auditor and there employed by him and the county commission in lieu of the uniform minimum local levy.

(5) The total of monies deducted in the apportionment to school districts by reason of local assessed under-valuation shall be retained in the uniform school fund and the tax levy to be made for the next succeeding year in order to raise the amount required for the uniform school fund to meet the state's required contribution shall be reduced accordingly.

History: R. S. 1898 & C. L. 1907, § 2598; L. 1915, ch. 111, § 1; C. L. 1917, § 5998; L. 1921, ch. 138, § 1; 1931, ch. 38, § 1; 1931, ch. 57, § 3; R. S. 1933, 80-9-2; L. 1939, ch. 99, § 1; C. 1943, 80-9-2; L. 1947, ch. 114, § 1; 1951, (1st S. S.), ch. 18, § 1.

53-7-5, Utah Code Annotated 1953" appeared in Code 1943 as "Section 75-12-5, Utah Code Annotated 1943."

Cross-References.

Constitutional provisions, Const. Art. XIII, § 7.

Tax for school equalization purposes, 53-2-26.

Collateral References.

Taxation ⇔ 305.

61 C.J. Taxation § 694.

Compiler's Notes.

The successive amendments enumerated in the history line have progressively enlarged the provisions of this section by substantial and material changes.

The reference in this section to "section

59-9-3. Contributions by school districts.—In addition to the basic state contribution provided in subsection 2, of section 59-9-2, each school district may participate in a supplemental state contribution in accordance with the provisions hereof and to be administered and distributed in accordance with the provisions of the chapter. For the purpose of determining such supplemental contributions, there shall be computed for each of the school districts the amount which could be raised by a local levy of 8 mills on the total assessed valuation of all tangible property within the district, assuming no estimated loss in collection of revenue. There shall also be computed for each of the school districts an amount equal to 30% of the cost of the basic state-supported school program. The amount, if any, by which the 30% of the cost of the basic state-supported school program exceeds the amount which could be raised by the local levy of 8 mills in any district shall be apportioned from the uniform school fund to each qualifying district as the supplemental state contribution to the minimum school program for such district, subject to the conditions of subsections (3), (4), and (5) of section 59-9-2.

In order to qualify for such supplemental state contribution, a district shall be required to levy a tax for operation and maintenance of 8 mills in addition to the uniform local levy and shall certify to the state superintendent of public instruction its decision so to participate on or before the first day of July of each year.

History: C. 1943, 80-9-2a, enacted by L. 1951 (1st S. S.), ch. 18, § 2.

Compiler's Note.

The references in this section to "section 59-9-2" appeared in the act as "Section 80-9-2."

Effective Date. 18, provided that act should take effect on approval. Approved June 18, 1951.
 Section 3 of Laws 1951 (1st S. S.), ch.

59-9-4. Determination by tax commission of minimum rate of levy—State's contribution to cost of minimum school program—Matters to be considered by tax commission—Transmission of rate by tax commission to auditors.—The commission shall then determine the minimum rate of levy on each dollar of assessed valuation of the tangible property in the state that will raise sufficient supplementary revenue to pay the state's contribution to the cost of the minimum school program for that year and any deficiency from previous years, provided that in accordance with the provisions of section 7, Article XIII, of the Constitution of the state of Utah, not more than 75% of the state's portion of the revenue necessary to finance the operation and maintenance of such minimum school program shall be raised by the state property tax levy. The commission shall take into consideration, from the best information available, and shall make allowance for, the estimated tax delinquency for the current year, and shall be conservative in its estimate of revenue to assure to the extent possible ample funds for the state's contribution to the cost of the minimum school program. The tax commission shall immediately thereafter transmit to the county auditor of each county and to the state auditor a statement of such rate, and upon its receipt the county auditor must, in writing, notify the state tax commission of the receipt thereof.

History: L. 1911, ch. 29, § 1; 1915, ch. 111, § 1; C. L. 1917, § 4575; R. S. 1933 & C. 1943, 80-9-3; L. 1947, ch. 114, § 1.
Collateral References. Taxation⇒305.
 61 C.J. Taxation § 694.

Compiler's Note.

The 1947 amendment completely rewrote section.

59-9-5. Rates fixed by state tax commission a valid levy.—The action of the state tax commission in fixing the rate of taxation for state and state school purposes is a valid levy of the rate so fixed.

History: R. S. 1898 & C. L. 1907, § 2594; C. L. 1917, § 5994; R. S. 1933 & C. 1943, 80-9-4.
Collateral References. Taxation⇒305.
 61 C.J. Taxation § 694.

ARTICLE 2

COUNTY LEVY

Section 59-9-6. Time for levy—Duties—General county purposes—Care and relief of indigents—Road purposes—Maximum levies—Increase upon reduction in assessed valuation due to tax exemptions.

59-9-6. Time for levy—Duties—General county purposes—Care and relief of indigents—Road purposes—Maximum levies—Increase upon reduction in assessed valuation due to tax exemptions.—The board of county commissioners of each county must, between the last Monday in July and the second Monday in August of each year, fix the rate of county taxes, designate the number of mills on each dollar of valuation of property for each fund, levy taxes of the taxable property of the county for general county purposes, and for the care, maintenance and relief of the indigent

sick and otherwise dependent poor; provided, that the maximum levies for the above mentioned purposes shall be as follows:

(a) In any county which has an assessed valuation for the current tax year of \$2,000,000 or less the levy for general county purposes shall not exceed six mills on the dollar and the levy for the care, maintenance and relief of the indigent sick and otherwise dependent poor shall not exceed one mill on the dollar.

(b) In counties which have an assessed valuation for the current tax year of more than \$2,000,000 and not more than \$4,000,000 the levy for general county purposes shall not exceed six mills on the dollar and the levy for the care, maintenance and relief of the indigent sick and otherwise dependent poor shall not exceed one mill on the dollar.

(c) In counties which have an assessed valuation for the current tax year of more than \$4,000,000 and not more than \$7,000,000 the levy for general county purposes shall not exceed five mills on the dollar and the levy for the care, maintenance and relief of the indigent sick or otherwise dependent poor shall not exceed five-tenths of a mill on the dollar.

(d) In counties which have an assessed valuation for the current tax year of more than \$7,000,000 and not more than \$20,000,000 the levy for general county purposes shall not exceed four and five-tenths mills on the dollar and the levy for the care, maintenance and relief of the indigent sick or otherwise dependent poor shall not exceed four-tenths of a mill on the dollar.

(e) In counties which have an assessed valuation for the current tax year of more than \$20,000,000, and less than \$100,000,000 the levy for general county purposes shall not exceed three and one-half mills on the dollar and the levy for the care, maintenance and relief of the indigent sick and otherwise dependent poor shall not exceed one-half mill on the dollar. In counties which have an assessed valuation for the current tax year of \$100,000,000 or more the levy for general county purposes shall not exceed three mills on the dollar and the levy for the care, maintenance and relief of the indigent sick and otherwise dependent poor shall not exceed one mill on the dollar. At the same time, the board of county commissioners of any county may also levy a tax of not to exceed three mills on the dollar for road purposes and the county commissioners shall have authority to expend or cause to be expended by agreement with the state road commission the revenue derived therefrom; provided, the maximum levies herein fixed may be increased in the same ratio as the taxable assessed value of any county may be reduced because of the adoption of homestead and personal property tax exemptions; and provided, that whenever any county is indebted at the time of the passage of this act for money advanced for the state road work by the state road commission, under the law existing prior to this act, the board of county commissioners in such county may levy an additional tax of not to exceed three mills on the dollar on the property of said county for state road purposes to recover the delinquent amount due to the state road commission.

History: R. S. 1898, § 2593; L. 1903, ch. 111, § 1; 1917, ch. 127, § 1; C. L. 1917, 127, § 1; C. L. 1907, § 2593; L. 1915, ch. § 5993; L. 1929, ch. 69, § 1; R. S. 1933, 80-

95; L. 1933, ch. 60, § 2; 1937, ch. 103, § 1; C. 1943, 80-9-5; L. 1945, ch. 109, § 1; 1949, ch. 81, § 1; 1951, ch. 97, § 1.

Compiler's Note.

The successive amendments enumerated in the history line have enlarged and changed the context of section entirely.

Cross-References.

Legislature not to impose taxes for county purposes, Const. Art. XIII, § 5.

Levy for care, relief or burial of indigents or dependent poor, 17-5-62.

1. Excessive levy.

Levy and collection of tax for agricultural and other inspection purposes was properly refused by county commissioners where it would have rendered rate of taxation on property for state purposes in excess of that permitted by Const. Art. XIII, §§ 7, 9. *Bennion v. Burgon*, 65 U. 433, 238 P. 236.

2. Levy for road purposes.

Separate levy of tax by county commissioners for county road purposes was

not invalid where amount of levy for general county purposes and amount levied for county road purposes in aggregate did not exceed amount commissioners, under the law, might have levied for general county purposes. *Los Angeles & S. L. R. Co. v. Richards*, 52 U. 1, 172 P. 474.

3. Dependent Mothers' Act.

Dependent Mothers' Act, 17-13-1, authorized expenditure of additional public funds in county, though such expenditure would bring money expended in excess of amount permitted by this section. *Denver & R. G. R. Co. v. Grand County*, 51 U. 294, 170 P. 74, 3 A. L. R. 1224.

Collateral References.

Taxation ⇨ 297.
61 C.J. Taxation § 677.

Treatment of surplus in making tax levy under budget, 126 A. L. R. 891.

Validity of ad valorem tax for highway purposes without attempt to apportion on basis of benefits, 72 A. L. R. 1103.

ARTICLE 3

CITY AND TOWN LEVY

Section 59-9-7. Time for levy—Certifying to county auditor.

59-9-7. Time for levy—Certifying to county auditor.—The governing body of each city and town shall, not later than the second Monday in August in each year, determine the rate of the general city or town tax, levy the same, and shall certify the rate and levy to the county auditor of the county in which such city or town is situate.

History: R. S. 1898, § 2689; L. 1903, ch. 16, § 1; 1903, ch. 132, § 1; C. L. 1907, § 2689; C. L. 1917, § 6103; R. S. 1933 & C. 1943, 80-9-6.

Collateral References.

Taxation ⇨ 297.
61 C.J. Taxation § 677.

Treatment of surplus in making tax levy under budget, 126 A. L. R. 891.

ARTICLE 4

EXCESS LEVY FORBIDDEN

Section 59-9-8. Cities, towns and counties to report to state tax commission.

59-9-9. State tax commission to report to county attorney.

59-9-10. Duties of county attorneys.

59-9-8. Cities, towns and counties to report to state tax commission.—The governing body of each city and town, and each board of county commissioners, must file a statement with the state tax commission, on or before the second Monday in August of each year, showing the amount and purpose of each levy fixed by such governing body and board.

History: L. 1923, ch. 68, § 1; R. S. 1933
& C. 1943, 80-9-7.

Collateral References.
Taxation—297.
61 C.J. Taxation § 677.

59-9-9. State tax commission to report to county attorney.—The state tax commission shall carefully examine such statements, and, if it appears that any levy has been fixed in excess of the maximum amount permitted by law, it shall immediately notify the county attorney of the county in which it appears that such excess levy has been fixed.

History: L. 1923, ch. 68, § 2; R. S. 1933
& C. 1943, 80-9-8.

Collateral References.
Taxation—297.
61 C.J. Taxation § 677.

59-9-10. Duties of county attorneys.—The county attorney when so notified shall immediately bring suit in a court of proper jurisdiction against the governing body or board levying such excessive levy to set it aside. The necessary expenses incurred by the county attorney in the prosecution of such action shall be borne by the county in which the suit was brought.

History: L. 1923, ch. 68, § 3; R. S. 1933
& C. 1943, 80-9-9.

Collateral References.
Taxation—297.
61 C.J. Taxation § 677.

ARTICLE 5

COLORADO RIVER PROJECT

Section 59-9-11. Tax for development of Colorado river water project.
59-9-12. Use of funds.

59-9-11. Tax for development of Colorado river water project.—The board of commissioners of governing body of each county, town, city, conservation district and metropolitan district may levy a tax of not to exceed one mill annually for participation in the development of the use of Colorado river water in Utah through the Colorado river-great basin project. Such tax shall be levied at the same time and collected in the same manner as other taxes.

History: L. 1939, ch. 100, § 1; C. 1943,
80-9-10.

and metropolitan water district for development purposes and defining such term.

Title of Act.

An act authorizing the levy of a tax of not to exceed one mill annually by each county, town, city, conservation district

Collateral References.

Taxation—298.
61 C.J. Taxation § 675.

59-9-12. Use of funds.—The moneys raised by such levy may be used for development purposes as provided in section 59-9-11 hereof or the governing body of any such taxing unit make contributions to the extent of the fund raised by such tax, to any state or government agency which shall have been organized for such public purpose and be engaged in such development.

History: L. 1939, ch. 100, § 2; C. 1943,
80-9-11.

Compiler's Note.
The reference in this section to "section 59-9-11" appeared in the act as "section 1."

Effective Date.

Section 3, Laws 1939, ch. 100 (Code 1943, 80-9-12) provided that act should take effect on approval. Approved March 17, 1939.

Collateral References.

Taxation 298.
61 C.J. Taxation § 675.

ARTICLE 6

CITY, TOWN AND COUNTY LIQUOR CONTROL FUND

Section 59-9-13. City, incorporated town and county liquor control fund—Creation of—Purpose of—Distribution and use of fund.

59-9-13. City, incorporated town and county liquor control fund—Creation of—Purpose of—Distribution and use of fund.—There is created a fund to be known as the "City, Incorporated Town and County Liquor Control Fund" to be administered by the state auditor as in this section provided.

On July first and January first of each year, commencing January 1, 1948, the state auditor shall certify to the finance commission of the state of Utah the monies available to each county, city and incorporated town of Utah which shall pay the amount certified by the state auditor to each of the said counties, cities and incorporated towns of the state of Utah from the monies deposited to the credit of the city, incorporated town and county liquor control fund. The state auditor shall determine the amount of money for each county, city and incorporated town on the basis of the proportion that the population of the area of each county in Utah outside of the incorporated limits of any city or incorporated town therein and the population of each city and incorporated town in Utah bears to the total population of the state of Utah as of the last official state or federal census.

The monies distributed to the counties, cities and incorporated towns, as in this section provided, shall be used for lawful purposes; and, provided further that nothing in this act shall prevent counties, cities and incorporated towns from cooperating and coordinating their activities with the money so derived.

History: C. 1943, 80-9-13, enacted by L. 1947, ch. 112, § 1.

Collateral References.

Taxation 908.
61 C.J. Taxation § 2234.

CHAPTER 10

COLLECTION OF TAXES

- ARTICLE 1. GENERAL PROVISIONS, 59-10-1 TO 59-10-8.
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8. SALES, 59-10-29 TO 59-10-41.
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