NEBRASKA DEPARTMENT OF JUSTICE

Opinion No. 26-004 — August 10, 2026

OPINION FOR THE COUNTY ATTORNEY OF HALL COUNTY

Legality of Retroactive Collection of Municipal Property Taxes Following Annexation Recording Error

Summary: Nebraska law permits county officials to correct errors and omissions in the county tax rolls at any time following the discovery of the error or omission. However, where such error or omission results in the failure to add certain properties to a city tax roll and the date of the property tax levy has passed before the failure was discovered, the county may not retroactively assess and collect municipal property taxes on those properties.

You requested our opinion on whether Nebraska law would permit Hall County officials to "correct tax rolls and retroactively assess and collect municipal property taxes that were not previously levied due to an administrative error following a municipal annexation." We conclude that while county officials are authorized to correct the county tax rolls at any time in accord with statutory procedures, the Nebraska Revised Statutes do not permit the retroactive assessment and collection of municipal property taxes after the date that the levy has been finalized.

I.

Your opinion request stems from the recent discovery of an error in the Hall County tax roll following the annexation of several residential properties by the City of Wood River, Nebraska, beginning in 2017 and continuing through the present. These annexations were properly recorded with the

Hall County Register of Deeds. However, these properties were not included in Wood River's tax roll following their annexation to reflect their inclusion in Wood River's taxing jurisdiction. While Hall County continued to assess and collect property taxes on these properties, the failure to include them in Wood River's tax rolls resulted in no city taxes being levied or collected.

Your request sets forth two primary questions. First, you ask whether Hall County may correct the tax rolls to reflect the previous property annexations by Wood River. Second, you ask whether the county may retroactively assess and collect municipal property taxes omitted from prior tax years due to an administrative failure to incorporate the annexed properties into Wood River's municipal taxing jurisdiction. We proceed to address each question in turn.

II.

Concerning the correction of the county tax rolls to reflect Wood River's annexations, Nebraska statutes provide a mechanism for after-the-fact corrections to the tax roll. Pursuant to Neb. Rev. Stat. § 77-1316.01 (2018), "[t]he county assessor of any county shall, at any time, correct the tax rolls as provided in section 77-1613.02 for any real property listed on the assessment roll but omitted from the tax roll." The language of § 77-1316.01 places an affirmative duty on the county assessor to correct the tax rolls, and this duty is not subject to any time constraints on when such corrections may be made. Thus, so long as the procedural requirements of Neb. Rev. Stat. § 77-1613.02 (Supp. 2025) are met, the Hall County Assessor may correct the tax rolls to reflect Wood River's annexations of the residential properties at issue.

III.

Notably, while § 77-1613.02 permits correction of "the assessment and tax rolls after action of the county board of equalization or final order of an applicable administrative body or court," it does not speak to the prospect of retroactive assessment and collection of municipal property taxes not included in the levy. Thus, the two questions presented are separate from one another, and the issue of a county's ability to retroactively impose municipal property taxes requires consideration of Nebraska's statutory mechanisms governing the assessment and collection of property taxes.

Each tax year, the process for assessing and levying property taxes is subject to a strict statutory deadline. We start with a summary of major dates and deadlines for county action applicable to each tax year relevant to the question presented:

- All real property subject to taxation must be assessed by January 1 in a given year, or for counties with a population of at least 150,000, the county assessor must complete the assessment of real property by March 19. *See* Neb. Rev. Stat. § 77-1301 (Cum. Supp. 2024).

- By June 1, the county assessor must certify that the adjustments to the assessment roll are complete with all notices of valuation changes having been mailed. *See* Neb. Rev. Stat. § 77-1315 (2018).

- By July 25, or August 10 for counties that have extended the deadline for hearing protests under Neb. Rev. Stat. § 77-1502, the county boards of equalization must finalize decisions on individual protests, overvalued or undervalued real property, and omitted property. *See* Neb. Rev. Stat. §§ 77-1502 and 77-1504 (2018, Cum. Supp. 2024).

- By August 24, or September 10 for counties that have extended the hearing deadline under § 77-1502, taxpayers must file any appeal from a final decision of a county board of equalization with the Tax

Equalization and Review Commission. *See* Neb. Rev. Stat. § 77-1510 (2018).

- By September 20, county, city, and political subdivision budgets must be finalized and filed with the levying board and State Auditor. *See* Neb. Rev. Stat. § 13-508 (Cum. Supp. 2024).

- The date of the levy is October 20 each year, which is the last date for the county boards of equalization to certify tax rates and levies. *See* Neb. Rev. Stat. § 77-1601(1) (Cum. Supp. 2024), *amended by* 2026 Neb. Laws L.B. 803, § 16.

- By November 5 each year, the county boards of equalization must issue all corrections to levies and tax rates stemming from clerical error. *See* § 77-1601(2).

- By November 22, the county assessor must complete the tax list for real and personal property and deliver it to the county treasurer with a signed warrant for the collection of taxes. *See* Neb. Rev. Stat. § 77-1616 (2018).

- Real and personal property taxes become due on December 31 for each year. *See* Neb. Rev. Stat. §§ 77-203 and 77-204 (2018).

Two of these dates are critical: the date of the levy, and the deadline for county boards of equalizations to correct clerical errors in the levy. These two dates reflect the limits of county authority to assess and collect real property taxes.

We briefly note, for the November 5 deadline to correct clerical errors in the levy set forth in § 77-1601(2), that safe harbor is inapplicable to the present matter. For each relevant tax year that the annexed properties were not included in the city tax roll, the November 5 deadline has passed. Thus, § 77-1601(2) does not provide any avenue for relief. The question therefore centers on the constraints placed on the county after the levy date has passed.

The Nebraska Supreme Court has observed that "the power to tax is determinable as of the date the levy was made." *See Lynch v. Howell*, 165 Neb. 525, 529, 86 N.W.2d 364, 366 (1957). *See also Natural Gas Pipeline Co. of America v. State Bd. of Equal.*, 237 Neb. 357, 367, 466 N.W.2d 461, 468 (1991) ("The power to tax is exercised when the tax is levied."). The impact of the levy date leads to the conclusion that once the date of the levy has passed, "the rights of individual taxpayers were set in concrete." *See DeCamp v. State Bd. of Equal.*, 203 Neb. 366, 374, 278 N.W.2d 619, 624 (1979) (Clinton, J., concurring).

Under the circumstances described in your request, we believe that Justice Clinton's concurrence in *DeCamp v. State Bd. of Equal.*, *supra*, is instructive. As he described:

> It is evident from the timetables that if the equalization and taxing process is to function equitably and as it is supposed to, it must meet the timetables established by the statutes of this state. There is no way the whole process can be rolled back and new tax statements sent unless it occurs long before [the date property taxes become due and payable.] Additional taxes cannot be levied after they have been paid except in the single instance of omitted property. As a practical matter, there can be no wholesale revaluation or levy after [the date the levy is made], simply because the statutes make no provision for it.

Id. at 374, 278 N.W.2d at 624.

Having reviewed relevant statutory authorities, we note Justice Clinton's observations remain applicable. The retroactive taxation of "omitted property" remains the single exception to the general temporal limitation on the power to tax pursuant to Neb. Rev. Stat. §§ 77-1317 and 77-1318 (2018). It is our understanding that the properties in question do not qualify as "omitted property" under Neb. Rev. Stat. § 77-123 (2018), which states that omitted property means, as relevant to this matter, "any taxable real property that was not assessed on March 19" or on March 25 for "any county with a population of at least one hundred fifty thousand inhabitants." However, the sole omission was the failure to include these properties in the Wood River city tax roll. There does not appear to be any question that the properties were assessed and subject to the Hall County levy for the tax years at issue. Consequently, Hall County may not use §§ 77-1317 and 77-1318 to assess and collect the municipal property taxes that would have otherwise been levied.

Given the foregoing, we see no statutory mechanism allowing for the retroactive assessment and collection of real property taxes for the residential properties that were not included in the Wood River city tax roll until the discovery of the error. If Nebraska law permitted deviation from the general property tax timeline and the retroactive assessment and collection of taxes not levied, there should be specific statutory authority. *See* 1979-80 Rep. Att'y Gen. 169 (Opinion No. 120, dated May 31, 1979) (County that failed to levy taxes for a sanitary and improvement district lacked authority make the levy after taxes became due). In the absence of such authority, we must conclude that Hall County may not retroactively assess and collect real property taxes on those annexed properties for tax years prior to their inclusion in Wood River's city tax roll.

IV.

Nebraska law permits county officials to correct the county tax rolls to address errors discovered therein at any time.

However, there is no statutory authority permitting the county to retroactively assess and collect municipal property taxes after the date of the levy on properties that had mistakenly not been included in a city's tax roll following their annexation.

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