

Tax, Real Estate Subject to Lien for Personal.

Where improvements attached to real estate are taxed, a lien for the amount of the tax attaches to the real estate.

Helena, Montana, March 17, 1909.

Hon. Martin Doty, Clerk and Recorder, Helena, Montana.

Dear Sir:

I am in receipt of your letter of March 13, 1909, together with enclosures, wherein you ask my opinion as to whether or not the Northern Pacific Railway Company is liable for a tax upon personal property owned by a person having a contract to purchase certain land, the legal title of which is still in the Northern Pacific Railway Company.

I am unable to determine from the facts in my possession the exact nature of the personal property upon which the tax has been levied. However, from the copy of the letter written by the County Treasurer of Lewis and Clark County to the Tax Commissioner of the Northern Pacific Railway Company, I judge that the property consists of improvements attached to the land. If that is true the case comes directly under the provisions of Section 2602, Revised Codes of Montana, which provides that:

"Every tax due upon improvements upon real estate, assessed to others than the owner of the real estate, is a lien upon the land and improvements."

By virtue of the provisions of this statute, I advise you that a lien for the amount of the taxes attaches to the real estate owned by the railway company. If, however, the personal property upon which the

tax has been levied consists of livestock, farm machinery, or other movable property which is not an improvement to the land, the land itself would not be liable to the burden of a lien for a tax upon such property.

Section 3718, of the Political Code of California, is the same as Section 2602, of the Revised Codes of Montana, and this section of the California Code has been construed in numerous cases, to which I refer you below.

The case which has been decided in this jurisdiction, *Walsh v. Croft*, 27 Mont., 408, goes off upon the first clause of Section 2602, and does not touch upon the point involved in your question.

The California cases are given below:

Peoule ex rel. Attorney-General vs. Reis, 76 Cal., 269, 277, 18 Pac. Rep. 309 (cited with other sections.)

People vs. Central Pac. R. Co. 83 Cal. 393, 407, 23 Pac. Rep. 303 (cited); *San Luis Obispo vs. Pettit*, 87 Cal. 499, 504, 25 Pac. Rep. 801;

San Gabriel L. & W. Co., vs. Witmer, 96 Cal. 623, 626, 29 Pac. Rep. 500, 31 Id. 588. 18 L. R. A. 465;

San Diego vs. Higgins, 115 Cal. 170, 172, 176, 46 Pac. Rep. 923;

People vs. Smith, 123 Cal. 70, 76, 55 Pac. Rep. 765;

McPike vs. Heaton, 131 Cal. 109, 110, 82 Am. St. Rep. 335, 63 Pac. Rep. 179.

Very truly yours,

ALBERT J. GALEN,

Attorney General.