

Taxation—Banking Corporation—Existence of Corporation.

A banking corporation whose articles of incorporation were filed April 11, 1921, and whose charter was granted April 12, 1921, is not subject to taxation during the year 1921, for the reason that the corporation had no existence at 12 o'clock noon on the first Monday of March, 1921.

Edwin J. Cummins, Esq.,
County Attorney,
Deer Lodge, Montana.

My dear Mr. Cummins:

You have inquired whether a banking corporation whose articles of incorporation were filed April 11, 1921, the charter being granted April 12, 1921, is subject to taxation during the current year in view of the fact that the bank was not in existence at 12 o'clock noon on the first Monday of March, 1921.

Section 1 of Chapter 31 of the Laws of 1915, relating to assessment of banks for the purpose of taxation, is in part as follows:

“All such shares must be listed and assessed with regard to their value at twelve o'clock noon, on the first Monday of March in each year, * * *”

This chapter was repealed by Chapter 81 of the Laws of 1921, but the same legislative intent that property of a bank shall be listed for taxation as of the first Monday in March of each year is shown by the following language in the new enactment:

"Section 4. The cashier or secretary of every state bank or banking corporation, and every private banker shall make and deliver to the assessor of the county in which said bank is located within five days after demand therefor, a statement, verified by his oath, showing the total moneys and credits of such bank, the amount of its deposits and any indebtedness representing money borrowed by said bank for use in its banking business, as disclosed by the books of said bank at twelve o'clock noon on the first Monday in March of each year. * * *

Section 2510 of the Revised Codes of 1907 is, in part, as follows:

"The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed or in whose possession or control it was at twelve o'clock m., of the first Monday of March next preceding * * *."

In the case of *Hayes v. Smith*, 58 Mont. 306, 312, the Supreme Court of Montana used the following language:

"In most jurisdictions the annual assessment of property subject to taxation is made as of some definite date, and the situs of the property determined as of that date. In pursuance of that general policy, our legislature, by the repeated references in the revenue measure, evinced very clearly an intention that in order for personal property, other than the net proceeds of mines, to acquire a situs for the purpose of taxation it must be within the state and subject to its jurisdiction at 12 o'clock noon on the first Monday of March. The references will be found in sections 2510, 2511, 2512, 2552, 2556, 2578, 2579 and 2601, Revised Codes, and possibly elsewhere, but the foregoing are sufficient for present purposes. No provision was made for the assessment of property introduced into the state after the first Monday of March, and in practice such property was not assessed for that fiscal year. Those principles have remained constant to the present time, unless modified by the legislature under which plaintiff's property was assessed. The authority of the legislature thus to fix a definite date as of which the situs of personal property for taxation is to be determined cannot be gainsaid, and since our legislature did so, the question of uniformity of taxation is to be determined with reference to that fact."

In 1 *Cooley on Taxation*, (3rd Ed.), page 604, the following language is used:

"Assessments are made periodically, and in many of the states every year. The customary regulation is that the assessment shall be made or completed on a certain day, or that it shall be made as of a certain day. This fixes the liability of persons and property to taxation for the year. There are some inconveniences and inequalities resulting from this, but some regulation of the kind is indispensable. A force of tax officers cannot be kept employed for the year in watching the transfers of property, the movements of persons, and vicissitudes of business, in order to equalize the charges upon them; periodical assessments, if they produce injustice in one case, may correct it in the next, and on the whole are likely to be fair. At any rate, they constitute the best regulation the law can establish. 'In the imposition of taxes, exact and critical justice and equality are absolutely unattainable. If we attempt it, we might have to divide one year's tax upon a given article of property among a dozen different individuals who owned it at different times during the year, and then be almost as far from the desired end as when we started. The proposition is utopian. The legislature must adopt some practicable system;' and this practicable system is found to be the one which has been indicated. Every person is therefore to be taxed for the year upon his personalty, estimated as of the time of the assessment, and every parcel of real estate according to its value as set down in the proper list or roll. Changes in the ownership of property, or in the value after the periods of assessment, cannot be taken notice of in taxation until the time for a new assessment has arrived. This is the general rule."

In 37 Cyc., page 989, the rule is stated as follows:

"The revenue laws commonly provide that the assessment shall be made, or shall be completed, on a certain day or within a certain time. Such a provision, however, is so far directory that the assessment will not be invalidated by a delay beyond the statutory time, unless it is shown that the delay prejudiced the particular taxpayer by depriving him of a right to be heard before the board of equalization or otherwise operated to his disadvantage. But the assessment must always be made as of the statutory date, or with reference to conditions as then existing; and hence a delay beyond that time will not enable the assessor to include in his list persons or property not within the state, or not in existence or not subject to taxation, on that date."

Wangler v. Black Hawk County, 9 N. W. 314;

Bunkie et al. v. Police Jury, 37 So. 970;

Rogers v. Gookin, 85 N. E. 405;

Clark v. Norton, 49 N. Y. 243;

Pardee v. Commonwealth, 47 S. E. 1010;

Dodge v. Nevada Nat. Bank of San Francisco, 109 Fed. 726;
Chesapeake & Ohio R. R. Co. v. State, 13 Lea (Tenn.) 348,
351;

State v. Hannibal & St. Joe R. Co., 101 Mo. 120;
Fond Du Lac v. Otto's Estate, 38 N. W. 917.

While the decision of Hayes v. Smith, *supra*, was based upon the unconstitutionality of an attempted classification of property for taxation purposes held by the Supreme Court to violate the constitutional rule of uniformity, nevertheless the language above quoted, in conjunction with the general rule announced in the cases cited, warrants the conclusion that property in order to be listed for taxation must be in existence and in the State at twelve o'clock noon on the first Monday of March.

The bank in question not having been in existence on the first Monday of March, 1921, it is my opinion that it is not subject to be listed for taxation until 12 o'clock noon of the first Monday of March, 1922.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.