Opinion No. 266.

Taxation—Assessment—Undivided Interest in Land, How Assessed.

HELD: The undivided interest of a tenant in common in land is not subject to tax as such. The lien for taxes extends to all of the land.

November 25, 1940.

Mr. Phil G. Greenan
County Attorney
Great Falls, Montana

Dear Mr. Greenan:

You have submitted the following:

"We would like the advice of your office as to whether or not an undivided interest can be separately assessed and whether or not the owner can pay the taxes upon his undivided interest without being compelled to pay the taxes upon the entire parcel."

We have been unable to find any decision by the Montana Supreme Court on the question of the assessment of undivided interests in land or the property of joint tenants in common. The general rule is stated in 61 C. J. 218, Section 197:

"In the absence of statutory authorization, the undivided interest of a tenant in common in land is not subject to tax as such, but lands held and owned by joint tenants or tenants in common may be assessed to them jointly, without specifying their respective interests, or may be severally assessed, or the property may be assessed in the name of either of them alone, in accordance with provisions of applicable statutes."

The subject is discussed and the cases are cited in the following:

Ann. Cas. 1914A 564, Note;
75 A. L. R. 433, Note;
80 A. L. R. 862, Note.

While there seems to be a conflict among the authorities the weight of authority holds that under our system of taxation lands itself and not a mere interest in it is the primary subject of taxation. The evils and confusion in assessing separate interests in land are pointed out in Tootman v. Courtney (W. Va.), 58 S. E. 915, 921. The court there said:

"Good reason for adopting the plan is found in the consequences which would flow from general use of the departure now under consideration. If 50 persons, owning equal undivided shares of a tract of land, were separately charged with their respective interests on the land book, the state's lien for taxes would be severed into 50 parts, and 50 suits might be maintained, and possibly would be necessary for the collection of the taxes on the tract. It would require 50 separate and distinct sheriff's sales for delinquency, and, if made to the state for want of private bidders, she would be compelled to make 50 purchases, instead of 1, undergoing multiplied risks of complication, delay, and loss, and the state would find herself, in thousands of instances, in a relation of cotenancy with private persons in the ownership of land, not only as the results of such sales, but also of forfeiture for nonentry. It would not only bring upon the state embarrassment in the enforcement of her constitutional rights and powers, but upon the people interminable confusion of land titles, contrary to the spirit of the Constitution, which, by its system of forfeiture and transfer, endeavors to prevent and eradicate uncertainty of such titles."

See also:

Corbin v. Inslee, 24 Kan. 154;

Curtiss v. Inhabitants of Sheffield, 100 N. E. 365, 213 Mass. 239, 50 L. R. A. (N.S.) 402.

In the absence of any decision of our court to the contrary, we think it to the interest of the state that the general rule as stated in Corpus Juris, above quoted, should be followed.