

IMPROVEMENTS - Oil and gas well casings are improvements;
MINES AND MINING - Oil and gas well casings are not mining fixtures;
OIL AND GAS - Well casings are taxable property;
PROPERTY, REAL - Oil and gas well casings are taxable as improvements to real property;
REVENUE, DEPARTMENT OF - Oil and gas well casings are taxable property;
MONTANA CODE ANNOTATED - Sections 15-1-101(1)(e), 15-6-101, 15-6-134, 15-6-134(1)(b), 15-6-138(1)(b), 15-23-611, 70-15-103, 70-15-104;
1889 MONTANA CONSTITUTION - Article XII, section 3;
MONTANA LAWS OF 1955 - Chapter 135;
MONTANA LAWS OF 1975 - Chapter 693, section 4;
MONTANA LAWS OF 1985 - Chapter 583.

HELD: Oil and gas well casings, which are permanently fixed in the well, are taxable property. Further, they are properly taxed as class four property. However, oil and gas well casings are exempt from taxation after December 31, 1984.

12 June 1985

John LaFaver, Director
Department of Revenue
Room 455
Sam W. Mitchell Building
Helena MT 59620

Dear Mr. LaFaver:

Your predecessor requested my opinion on the following questions:

1. Are oil and gas well casings, which are permanently fixed in the well, taxable?
2. If the oil and gas well casings are taxable, under what class of property should they be placed?

The relevant case law in this area has been outdated by the 1972 Montana Constitution and statutory amendments. Therefore, your question can best be answered by analysis of the current statutes.

Section 15-6-101, MCA, clearly provides that all property is subject to taxation unless otherwise exempt. This is consistent with accepted principles of statutory construction which only recognize tax exemptions expressed in clear and unequivocal terms. See Flathead Lake Methodist Camp v. Webb, 144 Mont. 565, 399 P.2d 90 (1965); Cruse v. Fischl, 55 Mont. 28, 175 P. 878 (1918); 3 Sands, Sutherland Statutory Construction § 66.09, at 207 (1974). Further, the oil and gas net proceeds tax states specifically that improvements or supplies used in connection with oil and gas production are taxable. § 15-23-611, MCA. Thus, oil and gas well casings are taxable property.

This was clarified by the 1985 Montana Legislature which approved Senate Bill 67, specifically exempting down-hole oil and gas wells from future taxation. 1985 Mont. Laws, ch. 583. Testimony during the March 25, 1985, House Taxation Committee hearing on SB 67 indicated that each county was taxing oil and gas well casings differently. Thus, the purpose of the bill was to uniformly exempt oil and gas well casings from taxation, effective December 31, 1984. While this tax

amendment clearly indicates that oil and gas well casings cannot be taxed after December 31, 1984, it also indicates they should be taxed prior to December 31, 1984. When the Legislature creates a new right, such as a tax exemption, there is a presumption that the right did not exist prior to the amendment. Montana Milk Control Board v. Community Creamery Co., 139 Mont. 523, 366 P.2d 151 (1961). Consequently, oil and gas well casings were taxable prior to December 31, 1984. The question then is, under what class of property should oil and gas well casings be taxed?

Oil well casings are "improvements" under the definition of section 15-1-101(1)(e), MCA, which provides that "the term 'improvements' includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land." See also § 70-15-103, MCA (defining fixtures); cf. § 70-15-104, MCA (defining mining fixtures).

Under the property classification scheme adopted in 1979, "improvements" which are not classified otherwise are taxed under class four property. See 1979 Mont. Laws, ch. 693, § 4, codified as § 15-6-134, MCA. Arguably, oil well casings could be classified with mining fixtures under section 16-6-138(1)(b), MCA, but the courts have not classified gas and oil production with mining production since enactment of the oil and gas net proceeds tax, or since the 1972 Montana Constitution deleted the mineral tax provisions of the 1889 Montana Constitution. See 1955 Mont. Laws, ch. 135, codified as Tit. 15, ch. 23, pt. 6, MCA; Mont. Const. of 1889, art. XII, § 3; Dye, Taxation of Mineral Interests Under Article XII, Section 3 of the Montana State Constitution, 32 Mont. L. Rev. 47, 57 (1971). Consequently, oil and gas well casings should not be classified with mining fixtures, but do fall under class four property. See § 15-6-134(1)(b), MCA.

Old Montana cases have held that mining improvements and oil well casings have no value independent of the mine or well, and therefore presumably are not taxable as separate property. See Hale v. County of Jefferson, 39 Mont. 137, 101 P. 973 (1909); Callender v. Crossfield Oil Syndicate, 84 Mont. 263, 275 P. 273 (1929), overruled on other grounds, 113 Mont. 392, 130 P.2d 685 (1942). These cases were decided prior to enactment of the oil and gas net proceeds tax, and under the 1889

Montana Constitution which prohibited taxation of mining improvements unless they had a value separate and independent of mining. See Tit. 15, ch. 23, pt. 6, MCA; Mont. Const. of 1889, art. XII, § 3. The 1972 Montana Constitutional Convention eliminated the old mineral tax provision in order to give the Legislature more discretion in taxing minerals. See II Mont. Const. Conv. 580, Revenue and Finance Committee, February 18, 1972. The Legislature exercised that discretion in 1979 with the restructuring of the property tax classification system. See 1979 Mont. Laws, ch. 693, codified at Tit. 15, ch. 6, MCA.

THEREFORE, IT IS MY OPINION.

Oil and gas well casings, which are permanently fixed in the well, are taxable property. Further, they are properly taxed as class four property. However, oil and gas well casings are exempt from taxation after December 31, 1984.

Very truly yours,

MIKE GREELY
Attorney General