

VOLUME NO. 41

OPINION NO. 17

AGRICULTURE - Irrigation district property, not used for or related to irrigation work, is not tax exempt;

REVENUE, DEPARTMENT OF - Irrigation district property, not used for or related to irrigation work, is not tax exempt;

TAXATION AND REVENUE - Irrigation district property, not used for or related to irrigation work, is not tax exempt;

MONTANA CODE ANNOTATED - Sections 15-6-201(1), 85-7-2011;

MONTANA CONSTITUTION - Article VIII, section 5;

MONTANA LAWS OF 1977 - Chapter 492.

HELD: Irrigation district property, which is not related to or used in irrigation work, is not exempt from taxation under the general irrigation district exemptions in sections 15-6-201(1)(a)(ii) and 85-7-2011, MCA.

13 June 1985

Harold F. Hanser  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

Is irrigation district property, which is not used in or related to irrigation work, exempt from taxation under the general irrigation district tax exemptions in sections 15-6-201(1)(a)(ii) and 85-7-2011, MCA?

Your question involves an interpretation of the following statutes:

Section 15-6-201. Exempt Categories. (1) The following categories of property are exempt from taxation:

....

(ii) irrigation districts organized under the laws of Montana and not operating for profit.

Section 85-7-2011. Exemption of irrigation district property. The bonds issued under the provisions of this part, rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and all other personal property belonging to any irrigation district organized under the laws of Montana and not operating for profit may not be taxed for state, county, or municipal purposes.

As I understand the facts in your situation, an irrigation district has purchased a home for use by the district manager. However, the current manager has his own home, and the irrigation district is renting its house to a private party.

Your question can be answered by analyzing the pertinent constitutional provisions, statutes, legislative history, and case law.

Montana's 1972 Constitution authorized the Legislature to exempt certain property from taxation. Mont. Const. art. VIII, § 5. However, the Constitution specifically notes that private interest in public property, such as libraries and municipal corporations, is taxable separately from the exempt property. Mont. Const. art. VIII, § 5(1)(a). Consequently, there is no constitutional justification for a blanket exemption for all property owned or used by an otherwise tax exempt entity. This is consistent with the legislative history of the above-referenced statutes.

The two statutes noted above, §§ 15-6-201(1)(a)(ii) and 85-7-2011, MCA, were most recently amended by the same bill in the 1977 Legislature. 1977 Mont. Laws, ch. 492. Section 2 of that bill, now section 85-7-2011, MCA, exempts bonds, rights-of-way, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and all other personal property, but does not exempt homes and other real property, not used in or related to irrigation work. This is significant because an express mention of certain items in a statute implies the exclusion of items not mentioned, a principle of law known as "expressio unius est exclusio alterius." State ex rel. Jones v. Giles, 168 Mont. 130, 133, 541 P.2d 355, 357 (1975); Stephens v. City of Great Falls, 119 Mont. 368, 381, 175 P.2d 408, 415 (1946). Further, section 1 of that bill, now section 15-6-201(1)(a)(ii), MCA, exempts only those districts which are nonprofit. It is certainly arguable that renting a house is profitable, and therefore outside the scope of the exemption.

Minutes from the February 2, 1977, Senate Taxation Committee hearing on Senate Bill 155 (now 1977 Mont. Laws, ch. 492, containing the above-referenced amendments), and the March 8, 1977, House Taxation Committee also indicate that the exemption was intended for equipment actually used by the irrigation districts in their work.

In addition, Montana has a long history of case law denying questionable tax exemptions in general, and questionable tax exemptions for nonprofit entities in

particular. Taxation is the rule, and exemption is the exception. Cruse v. Fischl, 55 Mont. 258, 263, 175 P. 878, 880 (1918). "Every claim for exemption from taxation should be denied unless the exception is granted so clearly as to leave no room for any fair doubt." Buffalo Rapids Irrigation District v. Colleran, 85 Mont. 466, 471, 279 P. 369, 370 (1929). Vague exemptions are generally construed strictly against the taxpayer claiming them. Montana Bankers Ass'n v. Montana Department of Revenue, 177 Mont. 112, 117, 580 P.2d 909, 912 (1978); State ex rel. Whitlock v. State Board of Equalization, 100 Mont. 72, 84, 45 P.2d 684, 687 (1935). "[V]igilance should be exerted to prevent the broadening of exemptions beyond the contemplation of the framers of our Constitution." Buffalo Rapids Irrigation District, 85 Mont. at 471, 279 P. at 370. Clearly, these general provisions dealing with tax exemptions indicate that this exemption should be denied. Other case law is even more convincing.

In Buffalo, an irrigation district was claiming a tax exemption of farmland that it acquired by tax deed, but which was not used for irrigation work. The court held that "[o]nly such property of an irrigation district as is used for governmental purposes should be exempt." 85 Mont. at 477, 279 P. at 372. The Court then went on to note that:

It is within the realm of possibility that the affairs of an irrigation district may be so conducted that a large portion, or all, of the land within the district should be acquired by the district by tax deed, as was the land in question; these lands might thereafter be operated by the district through the agency of croppers or leasers, and, if plaintiff's position were tenable, the entire district be thus relieved of paying its just proportion of the expense of the government which has rendered its existence possible and continues to protect its property at the expense of the people at large.

85 Mont. at 480, 279 P. at 373.

The Buffalo decision is consistent with other decisions involving nonprofit groups. See Old Fashion Baptist Church v. Montana Department of Revenue, 40 St. Rptr.

1774, 671 P.2d 625 (1983) (church owned several vacant lots adjacent to church building, but only the property occupied by the church and its access road are tax exempt); Montana Catholic Missions v. Lewis and Clarke [sic] County, 13 Mont. 559, 35 P. 2 (1893) (land which was purchased for, and intended for, charitable purposes, but which is currently unused, is not tax exempt).

THEREFORE, IT IS MY OPINION:

Irrigation district property, which is not related to or used in irrigation work, is not exempt from taxation under the general irrigation district exemptions in sections 15-6-201(1)(a)(ii) and 85-7-2011, MCA.

Very truly yours,

MIKE GREELY  
Attorney General