

**Assessment of Coal Lands. Taxation, of Coal and Mineral Rights. Coal and Mineral Rights, Assessment Of. Mines and Minerals, Assessment Of. Northern Pacific, Assessment of Coal Lands.**

Reservations of coal and mineral rights beneath the surface are exempt from taxation except as provided by Sec. 3, Article XII, of the Constitution and the statutes enacted in pursuance thereof.

August 8th, 1912.

Hon. Desmond J. O'Neil,  
County Attorney,  
Roundup, Montana.

Dear Sir:

On July 29th, in reply to your letter of July 25th, I rendered you an opinion in which I held that the coal and mining rights reserved by the Northern Pacific Railway Company in the lands sold by it is property subject to taxation under the laws of this state. Since writing that opinion, I have given the matter careful consideration with reference to the manner in which such assessment should be made, and have now reached the conclusion that my opinion to you under date of July 29th was incorrect and should be reversed.

There is no question but that the coal and mining rights reserved by the Northern Pacific constitute property, and if not exempt should be taxed; but it is my opinion that they are exempted from taxation by the provisions of Section 3, Article XII, of the Constitution. This section provides in substance that all mines and mining claims, after purchase from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground is used for other purposes and has a separate value for such purposes, in which case such surface ground so used for other purposes shall be taxed at its

value for such purpose; and that the annual net proceeds of all mines and mining claims shall be taxed as provided by law. This section of the constitution is identical with the provisions of Sec. 2500, of the Revised Codes, and must be construed to provide an exclusive method for taxing mines and mining claims. The legislature, in view of this provision of the constitution, enacted Sec. 2563 to 2571 inclusive, by which sections a method is provided for determining the annual net proceeds of mines for the purpose of taxation. The minerals underlying the surface are not taxable as such, but only the net proceeds derived therefrom. In the case of *Montana Coal & Coke Co., vs. Livingston*, 21 Mont. 59, the supreme court held that the net proceeds derived from a coal mine are subject to taxation. In the case of *Hale vs. Jefferson County*, 39 Mont. 137, 101 Pac. 973, the supreme court held that a ditch appurtenant to a placer claim, and used for no other purpose, is not subject to taxation, and in its opinion in that case stated that Sec. 3, Art. XII of the Constitution was enacted "to encourage the acquisition and profitable development of mines by requiring the owners to pay taxes upon the annual net proceeds or profits only, in addition to the cost of acquisition." This is a direct expression from the supreme court to the effect that coal and minerals in their natural state are not taxable, but that only the net proceeds derived therefrom are subject to taxation.

I have also taken occasion to read the records of the constitutional convention at which this section of the constitution was adopted, and especially manuscript pages 1334 to 1360, and it is apparent therefrom that the framers of the constitution intended by this section to tax only the net proceeds of the mines and not the minerals in their natural state underlying the surface. The framers of the constitution recognized the fact that it would be practically impossible to place a fair value upon mineral underlying the surface, and that in many, if not in every instance, the assessment would be purely speculative and would work a hardship upon the prospector and those engaged in developing the mineral resources of the country, and for that reason the right of taxation of mines and mining claims was limited to the surface with the improvements thereon and the annual net proceeds derived from the mine.

The question arises as to whether or not the right reserved to enter and mine the coal beneath the surface would constitute a mine or mining claim within the meaning of this section of our constitution. In my opinion it does, for the manner of acquisition of property cannot determine its value for the purpose of taxation. All taxes must be uniform (Sec. 1, Art. XII, Constitution), and all property must be assessed at its full cash value (Sec. 2502, Revised Codes). If mining operations were prosecuted and coal discovered upon any of this land so reserved it would then certainly constitute a mine, no matter from what source the title to the property may have been derived and the net proceeds of the mine would be subject to taxation. This section of the constitution must, in my opinion, be construed to cover all minerals underlying the surface.

You are, therefore, advised that in view of the constitutional provision, above referred to, the coal and mineral rights reserved by the Northern Pacific, and the right to enter and mine the same, are exempt from taxation.

Yours very truly,

ALBERT J. GALEN,

Attorney General.