

Irrigation Systems, Taxation of. Taxes, Collection of by Action. Taxation of Irrigation System. Action, Collection of Taxes by.

Canals, flumes and ditches of an irrigation system, and the franchises, and rights of way therefor, should be assessed as real property... Sections 2622 to 2655, inclusive, provide for a sale of such property. Section 2738 to 2739, provide a cumulative remedy by way of action for the collection of such taxes.

July 24, 1916.

Hon. Frank Hunter,
County Attorney,
Miles City, Montana.

Dear Sir:

I am in receipt of yours under date the 20th instant, relative to the collection of taxes on irrigation system, concerning which I wrote you a few days since. I note that you state that it is your opinion that the remedy by sale and deed, prescribed by Sections 2622 to 2655 inclusive, is exclusive, and that Sections 2738-9 apply only to the collection of personal property taxes. I see nothing in the provisions of these latter sections confining the remedy to personal property taxes. The language is general, and would seem to include every sort of taxes. This method of collecting taxes has been many times before the Supreme Court of California, and it has there been held that it may be utilized in the collection of the taxes on real estate. The cases in which this and similar legislation has been before the court, are:

People v. Olvera, 43 Cal. 492;
People v. C. P. R. R. Co. 43 Cal. 399;
People v. Ballerino, 99 Cal. 598, 34 Pac. 330;
People v. C. P. R. R. Co. 105 Cal. 576, 38 Pac. 905.

The case of *People v. Ballerino*, supra, is interesting and instructive, for the reason that it was a tax upon realty that was involved. Also, it appears that the section under which the action was brought, was identical with Section 2738 of our Code. You will note that the court in construing this action, holds that the offering for sale, as required, is a condition precedent to the state's right to bring the action. I did not intend, nor do I think it necessary, to hold that the property in question be seized forthwith, and sold. The offering for sale, undoubtedly in the case of real property, would mean an offer in the usual way. Upon consideration, this method of collecting taxes would seem to be cumulative, and in some cases rather necessary. The instance of the irrigating system, or reserved mineral rights, adverted to by you, are good illustrations. Either of them might be of rather a speculative nature, and consequently, not attractive to bidders at a tax sale. The method given in the Code allows a tax debt to be turned into a judgment, which may be executed upon any personal property, or other real property, which the tax debtor might own.

Yours very truly,

J. B. POINDEXTER,

Attorney General.