

Tax, Classification—Lands Included Within Right of Way.

Lands included within rights of way of railroads are not subject to land classification tax.

Oct. 24th, 1919.

Mr. J. E. Kelly,
County Attorney,
Boulder, Montana.

Dear Sir:

I am in receipt of your letter of recent date, with reference to the levying of the classification tax provided for by Chapter 89, Session Laws 1919, against the lands included in rights of way of railroad, power and other public service corporations.

While there can be no question but what lands, other than those included within rights of way, of such corporations, are subject to the classification tax provided for by such chapter, as they are owned and held in exactly the same manner and for the same purpose as similar lands owned and held by individuals, still I think that you are in error in advising the county clerk that the lands included within rights of way of such corporations are subject to the tax.

First with reference to railroads, the Constitution provides for the assessment by the State Board of Equalization of the franchise, roadway, roadbed, rails and rolling stock of all railroads (Section 16, Art. 12 Const.), and this includes the rights of way. In making this assessment the state board does not attempt to segregate and fix the value of each item separately, but fixes the value of all in a lump sum at a certain amount per mile, and then apportions the assessment according to the number of miles in each county, etc. Now the franchise and rolling stock are not real property but personal property, hence when the state board makes the assessment in a lump sum at a certain amount per mile that assessment is made on both real and personal property, and when you levy the classification tax against the value per mile returned by the state board to the county you are levying this tax against both real and personal property. As all of the property, both real and personal, is assessed at a lump sum per mile you will readily see that there is no way in which the county, or any one else, can segregate the values of the different items, so that it can be ascertained just what the value of the real property is

within the county, and, as you can not levy the tax against personal property, how are you going to determine the value of the real property against which the levy is to be made? It is therefore apparent that you can have no basis or valuation of the real property against which to levy the tax.

However, in my opinion, your error lies in this: You have construed the words "real property" used in Section 4 of Chapter 89 to mean "real estate" as defined in Section 2501, Revised Codes, and consequently that the tax levy shall be made against not only the land but also the improvements on the land, so that all buildings, structures, etc., whether situated on acreage property or on city or town lots, will be subject to the tax, as being a part of the real estate. In this you are wrong. I am of the opinion that Section 4 of said Chapter only contemplates that the tax shall be levied against lands, and not against any improvements thereon, the legislature evidently having in mind the provisions of Section 2502, which requires that land and the improvements thereon shall be assessed separately, and intending that the tax shall be assessed against the lands so assessed separately and not against the improvements thereon.

I anticipate from your letter, that in levying this tax it has been levied against all improvements on land as well as against the lands, and that in the event you should attempt to correct your assessment books at this time you will have a great deal of work to do, and the result will be that you will not receive from the levy the amount of taxes contemplated.

I think, therefore, the best thing for you to do is to let your books, with all of the assessments, stand as they are without attempting to make any corrections thereon. Should any railroad, or other public utility corporation, believe that its property is not subject to the levy, it can either commence an action to enjoin collection of the same, or pay the tax under protest and institute an action to recover back. In either event the question can be finally determined by the court.

Respectfully,

S. C. FORD,

Attorney General.