

Taxation—Assessment—Mineral Reservations, of Railroad Companies—Penalties Attach Where Not Paid—County Commissioners, Powers of to Remit Taxes.

Where a railroad company refused to pay taxes because its mineral land was included within the wrong classification, and its taxes become delinquent, the penalties provided by law attach, in that they could have been paid under protest.

The County Commissioners are without authority to remit penalties accrued for refusal to pay taxes, where assessment was in excess of that provided for by law.

March 20, 1920.

Mr. Joseph C. Torpe,
County Attorney,
Terry, Montana.

Dear Sir:

I am in receipt of your letter of the 16th inst., with reference to the assessment of mineral reservations of Northern Pacific Railway Company in 1919.

As I understand the situation the Railway Company makes no complaint of the valuation placed on the mineral reservations by the county assessor for assessment purposes, but contends that the basis for the imposition of the taxes should have been 30% of such valuation instead of 40% thereof, and that because the County Clerk in computing the taxes computed them on a basis of 40% of such valuation instead of 30%, they did not pay the taxes but permitted them to become delinquent, the treasurer thereupon adding a penalty of 10% and a fifty cent charge for publication; the Railway Company now offers to pay the tax assessed against such mineral reservations, on a basis of 30% together with the publication charge, but refuses to pay the tax

assessed against such mineral reservations, on a basis of 30% together with the publication charge, but refuses to pay the penalty, contending that they were justified in not paying the tax because it was computed on a 40% basis instead of a 30% basis, and hence no penalty should be added to the amount of the tax.

The county clerk was in error in computing the tax on a 40% basis in stead of a 30% basis, but this error on his part did not justify or warrant the Railway Company in permitting the taxes to become delinquent. It could have paid the taxes under protest, thus saving any penalty or publication charge, and, if the matter had not been adjusted by the board of county commissioners, could have instituted an action to recover the excess taxes paid. As a matter of fact not only this railway company, but several others, in a number of instances where the taxes were computed upon the wrong percentage, paid taxes under protest, and have instituted actions to recover the excess tax, and this company in this instance should have proceeded in the same manner. The penalty having become attached through the negligence and fault of the railway company, the board of county commissioners have no power or authority to remit or waive the same, but, the tax having been computed on too high a percentage, the board of county commissioners may adjust the matter by permitting the railway company to redeem the property by paying the tax computed on a 30% basis, with 10% of such amount added as a penalty, and the proper charges for publication.

Truly yours,

S. C. FORD,

Attorney General.