

Public Warehouseman—Assessment—Grain — Taxation.

Grain stored in an elevator has its situs for the purpose of taxation at the domicile of the owner, unless it has acquired an independent situs by use in trade or business in another state.

Frank T. Hooks, Esq.,
County Attorney,
Townsend, Montana.

My dear Mr. Hooks:

You have requested the opinion of this office relative to the matter of taxation of grain in public warehouses:

First: Whether the warehouseman can be compelled to furnish to the Assessor a list of those who have grain stored in the elevator.

Second: Whether a warehouseman has the right to deliver grain stored at points outside of the State of Montana and at points other than the original place of storage.

Third: Where and to whom should grain be assessed, where the elevator man refuses to disclose his records, and claims that the grain is now in Minnesota?

Fourth: Is a storage ticket issued by a public warehouseman taxable on the basis of the amount of wheat it purports to represent, or, must the physical wheat be located and assessed in the hands of the person in possession?

Since the statutes make ample provision for the examination of a person as to his property, it would seem hardly necessary to determine whether a warehouseman could be compelled to disclose his records and to report the amount of grain held in the warehouse and by whom owned, or as to whether he had a right to deliver the grain at points outside the State of Montana.

The statute (Section 2003, Revised Codes, 1921), provides, in part, as follows:

"He (the Assessor) must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control at twelve o'clock m. on the first Monday in March. Such statement must be in writing, showing separately:

"1. All property belonging to, claimed by, or in the possession, or under the control or management of such person. * * *

"4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) also the city, town, school district, road district, or other revenue districts in which it is situated. * * *

"6. All solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier, or managing agent."

The oath attached to this statement is found in Section 2004 and contains the following:

"That the above list contains a full and correct statement of all property subject to taxation, which I, * * * owned, claimed, possessed, or controlled at twelve o'clock m. on the first Monday in March last, * * *"

It would seem that this statement would be sufficient to obtain from the owner of the grain a full and complete statement upon which the assessment could be made, for the grain represented by the storage ticket is still owned by the holder of the ticket even though it be admitted that the elevator company had a right to remove it from the state and deliver it at a terminal elevator outside the state. The rule "*Mobilia personam sequuntur*" applies and the situs of the wheat remains at the domicile of the owner, unless it has acquired an independent situs by use in trade or business in another state, and this is hardly conceivable in the case of wheat on its way to market.

As to whether a storage ticket is taxable on the basis of the amount of wheat it purports to represent would depend upon the use which was made of it. If the ticket was held by the owner merely as a receipt for the grain it would not be taxable. However, if the ticket was used as the basis of credit to secure a loan, I can see no reason why it would not be subject to taxation, the same as a promissory note or other intangible property that was used as a basis for credit or as a representative of value. If the storage ticket is assessed there should be no assessment of the grain itself as this would be in the nature of a double taxation.

Your second question is answered by Section 3588, Laws of 1921, as amended by Chapter 41, Laws of 1923, which provides, in part, as follows:

"Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, grain of the grade, quality and quantity named therein shall be delivered to the holder of such receipt within forty-eight hours after the facilities for receiving the same have been provided, or at the option of the owner, such warehouseman shall deliver such grain at terminal, or if mutually agreed, the equivalent market value thereof on said date, less any freight and storage charges to terminal, and such other charges as may be allowed by the Commissioner of Agriculture."

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.