

**Assessment — Montana Wheat Growers Association—  
State Board of Equalization — Taxation — Warehouse Receipts.**

It is not proper to assess the wheat actually within the State of Montana on the first Monday in March to the farmers when warehouse receipts covering such wheat have been transferred to and the wheat is in fact owned by the Montana Wheat Growers Association.

State Board of Equalization,  
Helena, Montana.

Gentlemen:

You have submitted an inquiry based upon the following statement of facts:

On the first Monday in March, 1923, there were outstanding warehouse receipts for grain stored in public warehouses in Montana, which said receipts were transferred to the Montana Wheat Growers' Association under a certain contract existing between it and the member growers, some or all of which said receipts were in turn pledged by said Association to the War Finance Corporation as security for loans to said Association, from which said loans the Association made advances to said growers of approximately 90 per cent of the value of the wheat represented by the storage tickets. This was the condition as it existed on the first Monday in March.

Upon this statement of facts you desire an opinion as to whether the wheat should be assessed to the farmers for taxation.

Section 2002, R. C. M. 1921, relating to the assessment of property for taxation, provides:

"The Assessor must \* \* \* assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday in March next preceding," etc.

In 37 Cyc. 788, under the title "Taxation" this rule is laid down:

"Ordinarily and in the absence of statute to the contrary, property is taxable only to the person who is the owner thereof at the date for its listing or assessment, or the date fixed by statute as of which its ownership for purposes of taxation is to be determined; and taxes are not a lawful charge on property unless assessed in the name of its owner, and any attempt to enforce the payment of taxes assessed and charged to the wrong person will be ineffective. This does not mean that the person assessed must have a perfect and unencumbered title to the property, but only that he should be vested with

the apparent legal title, or with the possession coupled with such claims and evidences of ownership as will justify the assumption that he is the owner."

Applying these rules of law to the facts submitted, it appears that the assessment should be made to the Montana Wheat Growers' Association. That Association was the holder of the storage tickets, representing the wheat, on the first Monday in March. The transfer of the receipts to the Association by the depositors transferred the title to the wheat to the said Association, which also acquired by said transfer the direct obligation of the warehouseman to hold possession of the wheat for it according to the terms of the receipt as fully as if the warehouseman had contracted directly with it. (Sec. 4119, R. C. M. 1921.) Under the terms of the contract existing between the Association and the grower, it is specifically provided that:

"The grower further agrees that the Association shall have the power, without limitation, to borrow money in its name and on its own account for any purpose on the wheat delivered to it or on any warehouse or grain receipt or on accounts for the sale thereof or on any drafts, bills of exchange, notes, or acceptances, orders or any commercial paper delivered therefor; and to exercise all rights of ownership without limitation, and to pledge in its name and on its own account such wheat or receipts or accounts or drafts, bills of lading, notes, acceptances, orders or other commercial paper as collateral therefor. The Association shall pro rate the money so received among the growers and to pay to each grower his proportionate amount thereof, or to use the same for any proper association purpose or activity."

It thus appears, from both the legal effect of the transaction between the grower and the association and the terms of the contract itself, that on the first Monday in March the title and the possession of said wheat was in the Association. The fact that the receipts had been pledged by the Association as collateral to a loan it had obtained is immaterial and has no bearing upon the question. Until default in the terms and conditions of the hypothecation and subsequent action resulting in divesting the Association of its title to the wheat, the delivery of the receipts to the pledgee is merely conditional and does not pass the title to the wheat covered by the receipts, so as to make the pledgee the owner thereof.

It is, therefore, my opinion that upon the facts submitted it is not proper to assess the wheat, actually within the State of Montana on the first Monday in March, to the farmers when the storage receipts have been transferred to and the wheat is in fact owned by the Montana Wheat Growers' Association.

Very truly yours,

WELLINGTON D. RANKIN.

Attorney General.