

Irrigation Districts—Taxes.

An owner or mortgagee of lands in an irrigation district may pay taxes or irrigation district assessments on the basis of each forty acre tract or government fractional lot.

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Chairman, State Board of Equalization,
Helena, Montana.

Nov. 19, 1926.

My dear Mr. Walker:

You have submitted to me a letter from P. B. Haber of Fond du Lac, Wisconsin, giving a statement of acreage under the ditch and of acreage above the ditch in the Bynum irrigation district. He asks whether it

would be legal for the owner or mortgagee of these lands to pay the tax on the acreage "not under the ditch" but let the rest of the land under the ditch be sold for delinquent irrigation district assessments.

Section 7235 R. C. M. 1921, as amended by section 19, chapter 157, laws of 1923, provides for an annual tax levy against lands in an irrigation district and reads in part as follows:

"The board of commissioners of each irrigation district * * * shall levy against each forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty-acre tracts or in less than the platted lot, then against each such tract) of land in the district."

It will be observed from the above that the special irrigation district tax levy is made, except in the case of city lots, against each forty-acre tract or fractional lot, according to the government survey. For example, if a given forty-acre subdivision contains only five or ten acres of land under the ditch, the levy is made against the entire forty-acre tract for the proportionate amount which the area of the five or ten acres of land under the ditch in that forty bears to the total irrigable area in the district.

Attention is directed to the above facts to show that the irrigation district act does not provide for assessments on land "above the ditch" or "below the ditch." All assessments are made against specific forty-acre tracts or fractional lots, according to the government survey. It therefore follows that the only segregation of such land for taxpaying purposes that can be made is on the same basis, namely, forty-acre tracts or fractional lots.

Under section 2211 R. C. M. 1921, as amended by chapter 48, laws of 1923, an owner or mortgagee of land is permitted to redeem any designated lot or parcel of land from a tax sale and it is well settled that a taxpayer may pay the total tax on some of his real property without paying the tax on other property separately assessed. (See section 2191 R. C. M. 1921, and Cooley on Taxation, Vol. 3, section 1253.)

It is, therefore, my opinion that an owner or mortgagee of land in an irrigation district must pay or refuse to pay the taxes, whether special irrigation district assessments or general taxes, on the basis of each forty-acre tract or government fractional lot, and that he cannot pay said taxes on land above the ditch or land below the ditch, except as he may be able to effect such a result by paying taxes on said forty-acre subdivisions or fractional lots.

Very truly yours,

L. A. FOOT,
Attorney General.