

Opinion No. 494.**Taxation—State Property—Oil and Gas—Royalties—Oil Royalties of State, Taxation of.**

HELD: It is always presumed, when there is a question, that it is not the intent of the state to tax its own property.

The privilege and license tax of three-eighths of one cent per barrel on crude petroleum levied and assessed under Section 14, Chapter 18, Laws of the Extraordinary Session, 1933, is not to be collected on crude petroleum or the income from crude petroleum belonging to the State of Montana.

March 14, 1934.

Does the privilege and license tax of three-eighths of one cent per barrel on crude petroleum levied and assessed under Section 14, Chapter 18, Laws of the Extraordinary Session of the Twenty-Third Legislative Assembly of the State of Montana, apply to the State's royalty in such oil?

"The property of * * * the state, * * * shall be exempt from taxation; * * *." (Section 2, Article XII, Constitution.) Section 1998, R. C. M., 1921, as amended by Chapter 98, Laws of 1931, provides: "The property of * * * the state * * * are exempt from taxation, * * *." Therefore, if this is a tax upon property it cannot be collected on crude petroleum belonging to the State.

Section 1996, R. C. M., 1921, defines property for the purposes of taxation and provides, so far as pertinent, as follows:

"Whenever the terms mentioned in

this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.

"First—The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; but this must not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed."

Under this provision the tax might be deemed to be a tax upon property. It probably is more properly to be classified as a privilege or license tax which is enacted in lieu of a property tax.

The provisions of Section 2, Article XII, of the Constitution, declaring what property shall be exempt from taxation, is mandatory in character and self executing, and denies the legislature authority to tax any property of the class therein specified. (*Cruse v. Fischl*, 55 Mont. 258, 263.)

It is always presumed, when there is a question, that it is not the intent of the State to tax its own property. (*Cooley on Taxation*, Fourth Edition, Sec. 71, Sec. 91, Sec. 621; 26 R. C. L. page 331, par. 289; 61 C. J. par. 359, page 366.) These authorities clearly show that statutes of the character of Chapter 18, supra, are not intended to be taxes on state property or on the income from state property.

We therefore, conclude that this tax is not to be collected on crude petroleum or the income from crude petroleum belonging to the State of Montana.