

**Opinion No. 177.****Mines and Mining—Dumps—Taxation  
—Assessment.**

HELD: A mine dump, as such, is not subject to assessment and taxation.

September 28, 1935.

Mr. William R. Taylor  
County Attorney  
Anaconda, Montana

Your letter to us of September 11 is as follows:

"I have been requested to ask your opinion concerning whether or not mine dumps are taxable property.

"It is my opinion that because of the net proceeds statute Section 2090 of the R. C. M. of 1921, and as amended, that no tax can be placed upon a mine dump until the values of that dump have been reduced to basic metal and a definite value established. An estimation or assessment of the value of a mine dump for the purpose of taxation in my opinion is merely speculation, and until the values have been taken

from the dump there is nothing upon which a tax could be levied.

"I would appreciate if you would inform me of your opinion on this question at your earliest convenience."

If a mine dump is composed entirely of waste material it can hardly be said to have any value. Ordinarily, indeed, it is a liability rather than an asset to the owner. We shall, therefore, deal with a mine dump that contains minerals of value.

Section 3, Article XII, of the constitution is as follows:

"All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law."

Section 2088, Revised Codes 1921, is a reiteration of the constitutional provision just quoted, except in one respect, namely, that the words "other personal property" are used at the end of the former instead of the words "provided by law" at the end of the latter. Sections 2089 and 2090, Revised Codes 1921, as amended by Chapter 188, Laws of 1935, relate respectively to a statement of the gross yield of a mine during the calendar year by the operator thereof to the State Board of Equalization and to a computation of the net proceeds of such mine by said Board.

In discussing the reason for and the effect of this constitutional pro-

vision the Supreme Court in the case of *Byrne v. Fulton Oil Co.*, 85 Mont. 329, among other things said: "It is well settled in this state that the mineral contents of a mine may not be taxed in situ, but taxation must be on the annual net proceeds." (*Hinz v. Musselshell County*, 82 Mont. 502.)

Prior to the year 1919 Utah had constitutional and statutory provisions like ours regarding the assessment and taxation of mines. In construing these provisions the circuit court of appeals of the United States, eighth circuit, has invariably held that mine dumps or tailings dumps cannot be assessed and taxed; that only the net proceeds therefrom, if any, after treatment can be assessed and taxed. (*Salt Lake County v. Utah Copper Co.*, 294 Fed. 199; *Beaver County v. South Utah Mines*, 17 Fed. (2d) 577, certiorari denied by Supreme Court, 274 U. S. 746.) Cases which lend strong support to the cases just cited, though decided under somewhat different states of facts, are: *South Utah Mines v. Beaver County*, 262 U. S. 325; *Mercur Gold Mining Co. v. Spry*, 52 Pac. 382; *Nephi Plaster & Mfg. Co. v. Juab County*, 93 Pac. 53; *Mammoth Mining Co. v. Juab*, 170 Pac. 78; *Tintic Standard Mining Co. v. Utah County*, 15 Pac. (2d) 633.)

Under the authorities, including that of our own Supreme Court, we do not think that a mine dump, as such, is subject to assessment and taxation.