

Opinion No. 188.**Taxation—Mines and Mining—Net
Proceeds Tax—Personal Prop-
erty Tax—Delinquent Taxes**

HELD: 1. Net proceeds of mines are personal property and taxes levied upon such proceeds are taxes levied upon personal property.

2. Such taxes are secured by realty only to the extent of the interest of the operator in the mine or mining claim.

3. Chapter 88, Laws of 1935, has no application to taxes upon personal property unless real property has been sold on account thereof.

October 16, 1935.

Mr. W. M. Black
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In your letter of October 8, you have asked us to answer the following questions propounded to you by the county treasurer of Toole County:

"1. Are net proceeds taxes real property taxes or personal property taxes?

2. Are these taxes secured by real estate?

3. Are these taxes redeemable on or before December 1st under the provisions of Chapter 88, Laws of 1935?"

We shall attempt to answer these questions in their regular order.

The net proceeds of mines are personal property. (Section 2088, Revised

Codes, 1921; *Montana C & C Co. v. Livingston*, 21 Mont. 59; *Birney v. Warren*, 28 Mont. 64; *Tong v. Maher*, 45 Mont. 142; *Northern Pac. Ry. Co. v. Musselshell County*, 74 Mont. 81; *Homestake Exploration Corp. v. Schorregge*, 81 Mont. 604; *Hinz v. Musselshell County*, 82 Mont. 502; *Byrne v. Fulton Oil Co.*, 85 Mont. 329.) Therefore, the taxes levied upon such proceeds are taxes levied upon personal property.

The operator of a mine is liable for the payment of the taxes assessed against the net proceeds thereof. (Chapter 161, Laws of 1933; Chapter 188, Laws of 1935; *Northern Pac. Ry. Co. v. Musselshell County*, above; *Homestake Exploration Corp. v. Schorregge*, above; *Byrne v. Fulton Oil Co.*, above.) The taxes so assessed "shall be and shall constitute a lien upon all of the right, title and interest of such operator in or to such mine or mining claim and upon all of the right, title and interest in or to the machinery, buildings, tools and equipment used in operating said mine or mining claim." (Sec. 4, Chap. 161, L. 1933.) So far as real property is concerned, the taxes are secured only to the extent of the interest of the operator in the mine or mining claim.

Chapter 88, Laws of 1935, is a valid exercise of legislative authority. (*State v. Hitsman*, 99 Mont. 521, 44 Pac. (2d) 747.) Under its provisions a person having an interest in real property sold to the county for taxes prior to March 5, 1935, shall be permitted to redeem the same on or before the first day of December, 1935, when no assignment of the certificate of sale has been made by the board of county commissioners, by paying the original tax due thereon and nothing more. It has no application, however, to taxes upon personal property which have become delinquent unless real property has been sold on account thereof. (Opinions of Attorney General, May 13, 1935.)