

Opinion No. 202.

Taxation—Personal Property—Telephone Line, Mutual, Assessment of—State Board of Equalization—County Assessor.

HELD: 1. A mutual telephone line is properly assessable by the State Board of Equalization,—not by the county assessor.

2. A mutual telephone line is personal property and is assessable as such.

November 25, 1935.
Mr. H. O. Vralsted
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You have submitted the following:

"A group of farmers residing in Fergus and Judith Basin counties owns a mutual telephone line which extends along the public highways from a point in Judith Basin County, across the line and into a point in Fergus County. It is not corporation owned, merely owned by the association of farmers for mutual benefit and not for profit.

"Two questions have arisen for determination. The first is as to whether such lines are to be assessed by the county assessor or by the State Board of Equalization, and second, whether such telephone line is real or personal property?"

On the first question we cannot agree that the telephone line is properly assessable by the county assessor and not by the State Board of Equalization. In my opinion such property is securely within the jurisdiction of the State Board of Equalization under the provisions of Section 2138 et seq., as amended by Chapter 3, Laws of 1923. The case of *Chicago, Milwaukee & St. Paul Railway Co. v. Murray*, 55 Mont. 162, 174 Pac. 704, has no application and cannot be accepted as an authority as it involved a 1917 tax and the case was decided in 1918; whereas, Section 2138 et seq., were enacted in 1919. In this connection see also the amendment to Section 15 of Article XII of the Montana constitution, page 613, Laws of 1923. Section 8 of Chapter 3, Laws of 1923, provides:

"It shall be the duty of the Board and it shall have power and authority in addition to any authority under the present statutes: * * *

"3. To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights-of-way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property op-

erated in more than one county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis; * * *."

On the second question I agree with you that such telephone line is personal property. See *Butte Electric Ry. Co. v. Brett*, 80 Mont. 12, 257 Pac. 478, holding that poles imbedded in the soil and trolley wires attached to them for the purpose of furnishing motive power for the propulsion of street railway cars are personal property. Attention is called to the language of the court in this case on pages 16-19, where certain tests and rules are laid down for determining whether property shall be classed as real or personal property. In my opinion the property of the telephone company, following the reasoning of the Supreme Court in that case, must be classed as personal property.