

assessing credits to the taxpayer may properly deduct bona fide debts owing by him.

All property in this state, with certain exceptions not necessary to mention here, is subject to taxation. (Section 1, Article XII, of the Constitution; Section 1997, R. C. M. 1921; Homestake Exploration Corp. v. Schroegge, 81 Mont. 604.) Section 1996, Revised Codes 1921, which was first enacted at the legislative session of 1891, reads 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.

"Second—The term 'real estate' includes:

"1. The possession of, claim to, ownership of, or right to the possession of land.

"2. All mines, minerals, and quarries in and under the land, subject to the provisions of Section 2088 of this code, all timber belonging to individuals or corporations growing or being on the lands of the United States, and all rights and privileges appertaining thereto.

"3. Improvements.

"Third—The term 'improvements' includes:

"All buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether title has been acquired to said land or not.

"Fourth—The term 'personal property' includes everything which is the subject of ownership, not included within the meaning of the term 'real estate' and 'improvements.'

"Fifth—The terms 'value' and 'full cash value' mean the amount at

Opinion No. 298.

Taxation—Assessment—County Assessor—Debts, Deduction of—Credits, Assessment of.

HELD: 1. The county assessor in assessing credits to the taxpayer may not properly deduct bona fide debts owing by the taxpayer.

2. Subdivision 6 of Section 1996, R. C. M. 1921, is impliedly amended by Section 1999, R. C. M. 1921.

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Mr. Chris W. Demel
County Attorney
Billings, Montana

You have asked us whether or not in our opinion the county assessor in

which the property would be taken in payment of a just debt due from a solvent debtor.

"Sixth—The term 'credit' means those solvent debts, secured or unsecured, owing to a person.

"The term 'debts' means those secured or unsecured liabilities, owing by a person.

"In making up the amount of credits which any person is required to list, he will be entitled to deduct from the gross amount the amount of all bona fide debts owing by him, but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, must be considered a debt within the intent of this section; and no person is entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of any unpaid subscription to any institution or society, nor on account of a subscription to or instalment payable on the capital stock of any company or corporation; and no liability of any person or persons as surety for another must be deducted; and no deduction must be made in any case unless the party claiming such deduction discloses to the assessor, under oath, the name or names of the persons to whom such party is indebted, and the amount of such indebtedness to each, and also that such indebtedness is not barred by the statute of limitations."

The classification act was passed at the regular session of 1919. As amended it appears as Sections 1999 and 2000 in the Revised Codes of 1921. Section 1999 provides that "for the purpose of taxation the taxable property in this state shall be classified as follows: * * * Class Five. All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities without any deduction or offset; provided, however, that the terms, moneys, and credits as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state."

Whether the rule that if there be

any conflict between Section 1996 and Section 1999 the one later in enactment shall control, or the rule stated in Section 5525 that "if conflicting provisions are found in different sections of the same chapter or part, the provisions of the section last in numerical order must prevail," be invoked here the result is the same, namely, that as there is a conflict between the last paragraph of Section 1996 and the quoted provisions of Section 1999, the said paragraph is no longer effective. (59 C. J. 1051, 1052; State v. Zorn, 99 Mont. 63.)

Section 2511, Revised Codes 1907, provided that the county assessor "must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock m., on the first Monday in March. Such statement must be in writing, showing separately, * * * 6. All solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier or managing agent, deducting from the sum total of such credits only such debts, secured or unsecured, as may be owing by such person, firm or corporation. No debt is to be so deducted unless the statement shows the amount of such debt, as stated under oath, in the aggregate. In case of banks, the statement is not required to show the debts in detail, or to whom it is owing; but the assessor has the privilege of examining the books of such banks to verify said statement. Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but this statement must show the name of the person or officer who made the statement in which such property is included."

Section 2511 now appears as Section 2003 in the Revised Codes of 1921. It is significant, however, that Section 2003 is a verbatim copy of Section 2511 with the exception of the words "deducting from the sum total of such credits only such debts, secured or un-

secured, as may be owing by such person, firm or corporation. No debt is to be so deducted unless the statement shows the amount of such debt, as stated under oath, in the aggregate. In case of banks, the statement is not required to show the debts in detail, or to whom it is owing; but the assessor has the privilege of examining the books of such banks to verify said statement," which are omitted. It is thus brought into line with Section 1999 so far as necessary.

Section 2002, Revised Codes 1921, as amended by Chapter 30, Laws of 1935, is as follows: "The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the State Board of Equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock m., of the first Monday of March next preceding; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid. Credits must be assessed as provided in Section 1996, Subdivision 6."

This section has been substantially in its present form since it was first enacted in 1891. In view of what has already been said, the phrase, "credits must be assessed as provided in Section 1996, Subdivision 6," can mean no more than that credits must be assessed as provided in Section 1996, Subdivision 6, as impliedly amended by Section 1999. (59 C. J. 857; *People v. Phair*, 31 Pac. (2d) 421.)

Chapters 62, 63 and 64, Laws of 1929, being without the scope of the inquiry, have not been considered. See, however, *Bank of Miles City v. Custer County*, 93 Mont. 291, and *Merchants' National Bank v. Dawson County*, 93 Mont. 310.