

Opinion No. 372.**Property—Federal Land Bank.**

HELD: Fences owned by the Federal Land Bank, which have become personalty by actual or constructive severance from land to which the bank no longer holds title, cannot be assessed and are exempt from taxation.

November 25, 1936.

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It appears from the correspondence

which you have placed before us that some time prior to the first day of March, 1936, the United States became the equitable owner of certain land in Prairie County through purchase from the Federal Land Bank of Spokane. It further appears from such correspondence that the County Assessor of that county has taken the position that as the government did not buy the fences on said land they are personal property belonging to said bank and therefore subject to assessment and taxation. The question we are called upon to consider and determine, then, is whether or not these fences may be assessed and taxed under the circumstances here existing.

At the outset it may be only proper to state that when the United States acquires the equitable title to land it is no longer subject to assessment and taxation at the hands of the public authorities (*Town of Cascade v. County of Cascade*, 75 Mont. 304; *Ritchie v. City of Green Bay*, 254 N. W. 113, 95 A. L. R. 1081; *People v. City of Toulon*, 133 N. E. 707; 2 *Cooley on Taxation*, Sections 625, 629), and cannot be sold for taxes. (61 C. J. 1132, 1133.) Furthermore, by virtue of Section 2 of Article XII of the Constitution, the property is freed from further liability for taxes, if any, previously assessed against it and from the lien of such taxes the moment the United States become the equitable owner thereof. (61 C. J. 418, Section 450; 65 C. J. 1306; *State v. Locke*, 219 Pac. 790; *State v. Reed*, 272 Pac. 1008; *State v. Minidoka County*, 298 Pac. 366; *State v. Galyon*, 7 Pac. (2d) 484; *City of Harlan v. Blair*, 64 S. W. (2d) 434; *United States v. Mayse*, 299 Fed. 860.)

A fence is a fixture and its annexation to real estate is governed by the law of fixtures. One in possession of land is therefore presumed to be the owner of the fixtures thereon. (*Schmuck v. Beck*, 72 Mont. 606.) Such fixtures are real property. (Section 6667, R. C. M. 1935.) For purposes of taxation fences are deemed improvements erected upon or affixed to land and not personal property, whether title has been acquired to said land or not. (Section 1996, R. C. M. 1935.) They can become personalty only by severance from the realty.

The severance, however, may be actual or constructive. (26 C. J. 690, 691.) It may be added here that we are left entirely in the dark as to the language of the agreement, if any, under which the Federal Land Bank retains title, if at all, to the fences in question.

In an opinion rendered to the Chief Clerk of the State Board of Equalization on October 2, 1936, we said: "The Federal Land Bank of Spokane was established under the authority of Chapter 7 and the Federal Intermediate Credit Bank of Spokane under the authority of Chapter 8, Title 12, of the United States Code Annotated. Each of them is a regularly organized or constituted corporation (Sections 676, 1023), and shall act as a fiscal agent of the government when so designated by the Secretary of the Treasury. (Sections 701, 1024.) A part of the capital stock of the land bank and all of the capital stock of the credit bank are owned by the United States. (Sections 692, 698, 1061.) The net earnings of the latter shall be divided into equal parts, one-half to be paid to the United States and the balance into a surplus fund until it amounts to 100 per centum of the subscribed capital stock, and thereafter 10 per centum of the earnings to be paid into the surplus. After these requirements have been met, the then net earnings shall be paid to the United States as a franchise tax. The net earnings received by the United States shall, in the discretion of the Secretary of the Treasury, be used to supplement the gold reserve or be applied to the reduction of the outstanding bonded indebtedness of the United States. (Section 1072.) Section 931 of Chapter 7 provides that: 'Every Federal Land Bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate, held, purchased, or taken by said bank or association under the provisions of Section 761 and Section 781 of this chapter. First mortgages executed to Federal Land Banks, or to joint-stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed

and held to be instrumentalities of the government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.' Section 1111 of Chapter 8 provides that: 'The privileges of tax exemption accorded under Section 931 shall apply also to each Federal Intermediate Credit Bank, including its capital, reserve, or surplus, and the income derived therefrom, and the debentures issued under this title shall be deemed and held to be instrumentalities of the government and shall enjoy the same tax exemptions as are accorded farm loan bonds in said section.'

"In view of the law applicable to them, the courts have frequently declared that Federal Land Banks are instrumentalities of the Federal government, engaged in the performance of an important governmental function. (*Smith v. Kansas City Title & Trust Co.*, 255 U. S. 180; *Federal Land Bank v. Priddy*, 295 U. S. 229; *Federal Land Bank v. State Highway Department*, 173 S. E. 284; *Federal Land Bank of Baltimore v. Hubbard*, 178 S. E. 16; *Ellingson v. Iowa Joint Stock Land Bank*, 264 N. W. 516; *Leuthold v. Des Moines Joint Stock Land Bank*, 266 N. W. 450.) Though the courts have not so far determined the status of federal intermediate credit banks, the conclusion is inescapable that they, too, are instrumentalities of the United States. (*Smith v. Kansas City Title & Trust Co.*, above; *Ellingson v. Iowa Joint Stock Land Bank*, above; *Leuthold v. Des Moines Joint Stock Land Bank*, above; 34 Ops. U. S. Atty. Gen. 23.)

"It is well settled that the state may not tax the instrumentalities of the general government. It is equally well settled that the state may not impose a burden of any other kind upon such instrumentalities. (2 *Cooly on Taxation*, Section 606, p. 1286; 61 C. J. 371; *McCulloch v. Maryland*, 4 Wheat. 316; 4 L. Ed. 579; *Johnson v. Maryland*, 254 U. S. 51; *Federal Land Bank v. Crosland*, 261 U. S. 374; *Ford v. Great Falls*, 46 Mont. 292; *Mid-Northern Oil Co. v. Walker*, 65 Mont. 414; *Federal Land Bank of Baltimore v. Hubbard*, supra; *Federal Land Bank v. State Highway Depart-*

ment, supra; *Dallas Joint Stock Land Bank v. Ballard*, 74 S. W. 297.)"

If, then, the fences in question are still the property of the Federal Land Bank and are really personalty, as claimed, it is our view that they cannot be assessed and are exempt from taxation.