Opinion No. 149.

Taxation—Valuation—Assessed Valuation—Taxable Valuation.

HELD: The levy under Section 4465.12, R. C. M., 1935, is to be used on the taxable valuation of the property of the county and not the assessed calculation.

September 1, 1937.

Mr. Ernest E. Fenton
County Attorney
Hysham, Montana

Dear Mr. Fenton:

The question submitted to us, by you, is:

"Will you kindly give me your opinion on the question of whether the sixteen mill levy limitation for county purposes, prescribed by Section 4465.12, R. C. M., 1935, should be construed to mean sixteen mills on each dollar of **assessed** valuation or sixteen mills on each dollar of **taxable** valuation."

Replying to your inquiry, and thanking you for the consideration you have given this office in preparing a brief on this question, we are answering as follows: In State ex rel. Tillman v. District Court, 101 Mont. at page 181, the court gives us the purpose of taxation in the following language:

"The purpose of taxation is to raise the necessary revenue for the support of the government and the consequent security of the people in the possession of their property (Cruse v. Fischl, 55 Mont. 258, 175 Pac. 878). A tax is an enforced contribution from the people for this purpose, in accordance with some **reasonable** rule of apportionment **equalizing** the burdens upon the people benefited (State ex rel. Pierce v. Cowdy, 62 Mont. 119, 203 Pac. 1115)."

In theory, the burden of taxation ought to be borne by everyone in proportion to the value of his property. In practice it is not always so. Prior to the enactment of the classification act of 1919, we were at the mercy of the assessor, who would assess valuations of property at such figures as he might feel were justified. This led to much misrepresentation and dishonesty. This law continued in force from 1895 to the passing of the classification act. The classification act was then passed by our state legislature as a remedy (Chapter 51 of the Session Laws of 1919). No change has ever been made in what is now Section 4465.12, this particular section having been enacted in 1895. To all intents and purposes it reads the same today as it did in 1895, and we quote it as follows:

"4465.12. Taxation. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To levy such tax annually, on the taxable property of the county for county purposes as may be necessary to defray the current expenses therefor, including the salaries otherwise unprovided for, not exceeding sixteen (16) mills on each dollar of the assessed valuation for any one (1) year; and to levy such taxes as are required to be levied by special or local statutes."

With the enactment of the classification act, it became necessary for our courts to put a construction upon 4465.12 as to what was meant by assessed valuation and taxable valuation as used in that particular section.

You have called our attention to the case of Wibaux Improvement Co. v. Breitenfeldt, 67 Mont. 206. We read this case in a little different light than do you, and feel that the court did practically state that the basis of com-

putation should be upon the taxable value of the property:

"Section 5194 was enacted many years ago, and from the date of its enactment until 1919 there was but one standard by which the assessment and taxation of property could be measured. All taxes were computed upon the assessed value of property, which was presumed to be the full cash value, though in fact it was not. It was notorious that property generally was assessed at much less than its full cash value; but notwithstanding this fact the assessed value as determined by the assessors and boards of equalization became the value fixed by law as the basis upon which taxes were to be computed. The disparity in the valuation of different classes of property or of the same class in different counties gave rise to a demand for a new system under which a more equitable distribution of the burden of taxation might be had, and in response to that demand the legislature enacted Chapter 51, Laws of 1919 (Secs. 1999, 2000, Rev. Codes 1921). The purpose of that legislation was 'to remove the temptation to dishonesty in returning property for assessments; to shift the burden of taxes from property, as such, to productivity, or, in other words, to impose the burdens of government upon property in proportion to its use, its productivity, its utility, its general setting in the economic organization of society, so that every one will be called upon to contribute according to his ability to bear the burdens, or as nearly so as may be, and to relieve administrative officers from the apparent necessity of continuing the legal friction of full valuation in the face of contrary facts.' (Hilger v. Moore, 56 Mont. 146, 182 Pac. 477.) In order to reach the desired end, all taxable property was divided into seven classes, and property in every class was made subject to taxation upon a fixed percentage of its assessed value. Under Section 5194 assessed value and taxable value meant the same thing.

"By enacting Chapter 51, above, the legislature defined 'taxable value' to mean that percentage of the assessed value indicated by the scale found in section 2000. It is a fundamental rule of statutory construction that the intention of the legislature must be given effect, if possible (Sec. 10520, Rev. Codes 1921; Bennett v. Meeker, 61 Mont. 307, 202 Pac. 203). There cannot be a doubt as to the intention of the legislature in enacting Chapter 51, above. In terms the meaning of which cannot be questioned, the lawmakers substituted a new standard as the basis upon which taxes should be computed thereafter for the standard prescribed by prior statutes, including Section 5194, and this was accomplished by giving to the term 'taxable value' a definition different from that which it had borne theretofore."

Likewise has the court given its construction to the term "assessed value" and "taxable value," in the case of Heckman v. Custer County, et al., 70 Mont. 84. The court uses the following language:

"As employed herein, 'assessed value' means the value fixed upon taxable property by the county assessor and equalized by the county and state boards of equalization. 'Taxable value' means that percentage of the assessed value which is made the basis of computation of taxes by Sections 1999 and 2000, Revised Codes of 1921. * * *

"By an Act approved February 20, 1923, the Eighteenth Legislative Assembly amended Section 4614 by providing that thereafter any new bonds to be issued, with the outstanding bonded indebtedness, shall not in the aggregate exceed 'five per centum of the per centum of the assessed value of the property upon which taxes are levied and paid within such county, to be ascertained by the last assessment for state and county taxes.' (Chap. 21, Laws 1923.) In other words, by this amendment the legislature undertook to substitute taxable value for assessed value as the basis for determining the limit of county bonded indebtedness and succeeded, if the amended statute is a valid legislative enactment."

and concludes that the said Chapter 21 of the Laws of 1923, was constitutional; that it establishes effectually the **taxable value** of property as a basis upon which the limit of county bonded indebtedness is to be computed.

The court has again construed the question in State ex rel. Judd v. Cooney

et al., 97 Mont. 75, in the following language taken from Chapter 158 of the Laws of 1923:

"'Wherever, by statute, rule, or law, it is or shall be provided that any tax shall or may be levied to the extent of a given number of mills on the property, within any County, or tax district or unit, or on the dollar, or on the value of such property, or on the taxable value or assessed value thereof, or similar expressions, or wherever it is or shall be provided, as aforesaid, that a tax may be levied not exceeding a given number of mills levied as aforesaid, or not exceeding a given percentage of the value, or taxable value, or assessed value of property, or similar expressions, the said expressions shall be taken to mean the value of the taxable property in such County, tax district, or tax-unit, as ascertained or determined by taking a percentage of the true and full value, provided, or to be provided, by law, rule, or practice, for the purposes of taxation, unless a meaning otherwise expressly and clearly appears to be contrary.' (Section 1.)"

You have called our attention to this case in your brief, and we take it that it is your opinion that because the court held that the funding bonds should be paid, having been issued as based upon the assessed value of the property, that the statute referred to should mean the assessed value of the property. We understand, however, that the reason of the decision of the court was a matter of the state having entered into a contract on the original issue of these bonds; that the assessed value of the property should govern and the original bonds were issued prior to the passage of the classification law, Chapter 51 of the Laws of 1919. We quote the language of the court, as follows:

"When the bonds which are to be refunded were issued and sold, the law provided for the levy and collection of the tax upon the assessed value of all property in the state subject to taxation for the payment thereof, and the duty to levy and collect such a tax became an obligation of the contract with the holders of the educational bonds. (State ex rel. Malott v. Board of County Commrs., 89 Mont. 37, 296 Pac. 1; Von Hoffman v. Quincy, 4 Wall. 535, 18 L. Ed. 403; State ex rel. Tipton v. Erickson, 93 Mont. 466, 19 Pac. (2d) 227.)

"The refunding bonds which the board of examiners have sold to the relator upon the condition that, when issued, they shall be payable from the levy and collection of taxes as provided in Section 7 of Chapter 23 amount to a renewed recognition of a subsisting liability. They secure a portion of the same debt which the people authorized when they adopted the Initiative Measure, and continue to be a liability resting upon the state. (Hotchkiss v. Marion, 12 Mont. 218, 29 Pac. 821; Palmer v. City of Helena, 19 Mont. 61, 47 Pac. 209; City of Los Angeles v. Teed, 112 Cal. 319, 44 Pac. 580; Opinion of Justices, 81 Me. 602, 18 Atl. 291.)

"The indebtedness to be evidenced by the refunding bonds is the same indebtedness evidenced by the educational bonds, and the levy of a tax upon each dollar of assessed value of all property subject to taxation in the state applies to and controls the levy of the tax for the payment of these refunding bonds, even without reference to any provision in the statute authorizing the issuance of the same. (Hotchkiss v. Marion, supra; Blanton v. Board of Commrs., 101 N. C. 535, 8 S. E. 162.)

"It is clear that the legislative assembly intended that the tax should be levied upon the assessed value and not upon the taxable value of the property. * * *"

We might say further in reference to the case of State ex rel. Judd v. Cooney et al., that this came about through the Initiative Act, and, of course, was the will of the people; that it was for a particular purpose and in conformity with Section 5612, R. C. M., 1921. You will note that this particular section has been omitted in our 1935 codification, which simply means that the particular section referred to a particular purpose and such purpose has been served so there was no necessity of carrying on in the Codes of 1935, Section 5612.

You call our attention to the construction of statutes amended and repealed, etc., and apparently are relying upon the case of State ex rel. Nagle v. The Leader Co. et al., 97 Mont. 587 at page 591. It is our opinion that this is

not the rule applicable in the construction of this particular statute. We might say that we agree with you perfectly in the history of the statute, from 1895 to the last statement of our legislature, adopted as Chapter 100 of the Session Laws of 1931. To our minds the significant feature of this particular history is this, that through all of this period Section 4465.12 has undergone no particular change, and that while Chapter 100 of the Laws of 1931 is an amendment of Section 4465, and, we might say, the entire section of the Laws of 1921, as well as subsequent amendments to the said section, that in the construction thereof Section 93 of our Codes is applicable. This section reads as follows:

"Where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form, **but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and** the new provisions are to be considered as having been enacted at the time of the amendment."

This merely means to say that since that portion of Section 4465 of the Laws of 1921, which is our present Section 4465.12, Laws of 1935, was not altered or changed and therefore must be construed to have been the law from the time of its original enactment in 1895, and whatever constructions have been placed upon this particular section by our Supreme Court would be just as effective today as they were prior to the passage of Chapter 100 of the Laws of 1931.

In connection with this construction, the court said in the case of State v. Board of County Commissioners, 47 Mont. 531, 539, the following:

"Section 119, Revised Codes, provides: 'Where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.' This merely states a general rule as it was recognized by the authorities at the time our Codes were adopted. (Black on Interpretations of the Laws, Sec. 133, 36 Cyc. 1083; Ely v. Holton, 15 N. Y. 595; Moore v. Mausert, 49 N. Y. 332.) In City of Helena v. Rogan, 27 Mont. 135, 69 Pac. 709, this court said: 'Where a provision is amended by an Act using the words 'to read as follows,' it must be the intention of the lawmakers to make the amendment a substitute for the old provision, and to have it take its place exclusively.' The same rule is stated in 1 Lewis' Sutherland on Statutory Construction, second edition, section 237, as follows: 'The amendment operates to repeal all of the section amended not embraced in the amended form. The portions of the amended sections which are merely copied without change are not to be considered as repealed and again amended, but to have been the law all along; and the new parts or the changed portions are not to be taken to have been the law at any time prior to the passage of the amended Act.'"

This rule of construction was again adopted in the case of Continental Supply Co. v. Abell et al., 95 Mont. 148, 164, in which case are many Montana citations.

In conclusion, it is the opinion of this office that Section 4465.12 should be so read as to apply the tax levy upon the taxable valuation of the property within the county, and not upon the assessed valuation.