

Opinion No. 50.

Taxation—Personal Property—Assessment, Place of—Wheat Mortgaged to Commodity Credit Corporation.

HELD: Wheat on which the Commodity Credit Corporation has made a loan is taxable in the county in which the farmer or owner resides.

Wheat on which the Commodity Credit Corporation has made a loan, is mortgaged property, the title remaining in the farmer or borrower and is assessable and taxable to the farmer in the absence of Act of Congress exempting it.

The tax on wheat on which the Commodity Credit Corporation made a loan is a lien on the real property and on the other personal property belonging to the owner; such tax cannot operate to deprive the Commodity Credit Corporation of its lien.

April 21, 1939.

State Board of Equalization
Helena, Montana

Gentlemen:

I have your request for an opinion with reference to the taxing of wheat on which the Commodity Credit Corporation has made loans to farmers, and in connection with this request you have submitted the following questions:

1. For the purpose of assessment, does wheat on which the above corporation has made a loan differ in

any respect from other personal property pledged or mortgaged as security for a loan?

2. Does any Act of Congress, passed with respect to such loans, prohibit the taxing of the wheat as property of the producer?

3. If taxable, is the wheat to be assessed to the owner in his home county or in the county, city and school district in which it is found on the assessment date?

4. If taxable to a producer who does not own real property sufficient to insure the payment of the tax, what method of collection may be employed by the county officers?

5. If the wheat is not assessable at the domicile of the producer by reason of removal from the county (at the instance of the corporation or otherwise) can the local assessor assess the storage tickets as solvent credits?

The Commodity Credit Corporation was organized under the laws of the State of Delaware on October 17, 1933, pursuant to executive order. Congress by act continued its existence as an agency of the United States government until April 1, 1937; Section 7 of Chapter 2, Part 1 of Volume 49, Statutes at Large, page 4 (Public No. 1). On January 26, 1937, Congress by amendment extended the life of this corporation until the close of business on June 30, 1939; Volume 50, Part 1, Statutes at Large, page 5 (Public No. 2).

By Subdivision B of Section 1302, Title 7, U. S. C. A., the Secretary of Agriculture was authorized to make loans to producers of wheat in certain circumstances through the Commodity Credit Corporation. By this Act, the terms and conditions of the loans are to be fixed by the Secretary of Agriculture, subject to the approval of the President and the Commodity Credit Corporation.

It will be noted that in the Act of Congress extending the life of the Commodity Credit Corporation it was declared to be an agency of the United States.

The Commodity Credit Corporation has made loans to farmers on wheat under two different agreements. Their Form A is used where the wheat is stored on the farm and their Form B

is used where the wheat has been stored in the elevator, a public warehouse. The Form A contains a note in ordinary form, payable to the Commodity Credit Corporation. Below this is a document designated as a chattel mortgage. It provides that the producer "hereby sells, assigns, mortgages and/or hypothecates to the Commodity Credit Corporation as collateral security for the payment of the indebtedness as evidenced by the above note, the wheat described and identified in the schedule below." This document contains numerous provisions under the terms of which the corporation is authorized, after the maturity of the note, to sell the wheat, retain the amount of the loan and expenses, and any surplus remaining is payable to the farmer. This instrument is acknowledged, contains a mortgagee's affidavit of good faith and a mortgagor's affidavit of good faith and receipt of copy of the document.

The Form B contains the same form of note and below that is what is called a loan agreement. It contains the same form with reference to the contract as is quoted above from Form A. It contains a schedule of warehouse receipts and provides that after the maturity the Commodity Credit Corporation may sell and retain the proceeds and account for the surplus remaining, if any, to the owner of the same as in Form A. In Form B the commodity Credit Corporation is described as a government agency.

By the provisions of Section 2 of Article XII of the Constitution, mortgages of record upon real or personal property may be exempt from taxation. The Legislature, pursuant to this constitutional authority, has exempted mortgages of record upon real and personal property from taxation. (Section 1998, Revised Codes.) By the same constitutional provision and the same section of the statutes, the property of the United States is exempt from taxation.

Congress has passed no act prohibiting the taxing of this wheat, nor any special law relating to the taxation of this wheat.

These two agreements, Forms A and B, are nothing more than chattel mortgages on the wheat. Form A declares on its face that it is a chattel mortgage and Form B, while it is called a loan

agreement, by its terms it creates a lien on the wheat for the security of the payment of a debt. The farmer who signs either of these instruments has a right to the surplus remaining on the sale of the wheat and consequently it cannot be said that by either of these instruments the absolute title of the wheat has passed to the Commodity Credit Corporation. Our Supreme Court has held that any device by which the property of a person is to be held as security for a debt is a chattel mortgage. The following cases illustrate the application of this rule to various sets of facts:

Brown v. Federal Surety Company, 91 Mont. 389, 8 Pac. (2) 647;

First National Bank v. Marlow, 71 Mont. 461, 230 Pac. 374;

Crone v. Occident Elevator Company, 70 Mont. 211, 224 Pac. 659;

Barth v. Ely, 85 Mont. 310, 278 Pac. 1002.

Therefore, it is my opinion that for the purposes of assessment the wheat on which the Commodity Credit Corporation has a mortgage shall be assessed to the owner of the wheat who has pledged or mortgaged it as a security for a loan and that no Act of Congress prohibits the assessment of the property to the farmers. In other words, this wheat will be assessed in the same manner it would be assessed as if a bank or individual held the mortgage or loan agreement.

The Montana Supreme Court, before the enactment by the Legislature of the migratory stock law, held, as to livestock, that it was to be assessed in the county where the owner resided and had his place of business, even if the livestock was at the assessment time in another county (*Flowerree Cattle Company v. Lewis and Clark County*, 33 Mont. 32.) Section 2016 of the Code provides that personal property belonging to the business of a merchant or manufacturer must be listed in the county or district where his business is carried on. Section 2016 provides that the personal property of express, transportation and stage companies, steam boats, vessels and other water craft must be listed and assessed in the county, town or district where such property is usually kept. Section 2018 provides that the personal prop-

erty and franchises of gas and water companies must be listed and assessed in the county, town or district where the principal works are located. Section 2069, which relates to the assessment of migratory livestock, declares that livestock, where they are absent from the home county to be fed in feeding pens or enclosures, that they are to be taxed in the home county.

These sections to which I have referred are only of interest to the extent that they declare and indicate the policy of our law as declared by the Legislature. In fact, it was the conclusion of our Supreme Court in the *Flowerree* case that these sections did so declare the policy of our law. As was pointed out in that case, if personal property was to be assessed in the county where it chanced to be on the first Monday of March, rather than at the county or district in which its owner resided, confusion would result as persons living in counties having high tax levies would move their property over the line for the time being into the counties having low tax levies. The same would be true with reference to school districts, cities and towns. Personal property would migrate prior to the first Monday of March in many instances into low tax levy districts or counties.

Section 2247 contains one sentence, which, standing alone, would indicate that personal property was to be assessed wherever found on the first Monday of March. However, a careful reading of the section demonstrates that it relates, in speaking of the place where personal property shall be assessed, only to that personal property which has no known owner.

Section 2003 Id., provides that a taxpayer shall make a statement setting forth all the real and personal property owned by him and showing "all property belonging to, claimed by, or in the possession or under the control or management of such person." See also Section 2010 Id. Moreover, we are advised that it has been the practice in years past to assess grain to the grower in the county where the grain was produced and the storage tickets held, regardless of the fact that the grain may have been shipped from the local elevator where originally stored to larger grain warehouses in the larger cities. We think this prac-

tice more just to the farmer, as the tax may then be made on the basis of levy in his own county rather than on the usually much higher levy in the county of the terminal elevator to which his grain may be shipped for the convenience of the warehousemen. It is also, as we have shown, in line with the policy of our law.

Taxes are levied upon persons and not upon property. It is the person who is taxed. The property which the person owns is used to determine the amount of the tax the taxpayer shall pay. It is the person who, after all, pays the tax. The person is liable for the tax.

Christofferson v. Chouteau County,
105 Mont. 577, 74 Pac. (2) 427;

Ford Motor Company v. Linnane,
102 Mont. 325, 57 Pac. (2) 803;

Hale v. County Treasurer, 82
Mont. 98, 265 Pac. 6;

Hilger v. Moore, 56 Mont. 146,
182 Pac. 477;

State v. Camp Sing, 18 Mont. 128,
44 Pac. 516.

It is my opinion, therefore, that this wheat, regardless of where it may be now stored, if it is stored within the state, must be assessed in the home county and school district where the farmer who owns it resides.

Subdivision A of Section 2153 of our Codes, as amended by Chapter 97 of the Laws of 1937, declares that every tax due upon personal property is a prior lien upon any or all of such personal property, which lien shall have precedence over any other lien, claim or demand. Where the tax is levied for wheat in storage, if the taxpayer owns real estate, it will be a lien upon his real estate, as provided by Subdivision B of the section, and if he owns other personal property, it will be a lien upon that personal property. However, since Congress has declared that the Commodity Credit Corporation is an agency of the United States and property of the United States is exempt by statute and Constitution of our state, the lien for the personal property on the wheat cannot take preference over the lien of the Commodity Credit Corporation, as that would permit the taxing of property of

an agency of the United States, which cannot be done.

Santa Rita Oil and Gas Company v. State Board of Equalization, 101 Mont. 268, 54 Pac. (2) 117.