

No. 89

NET PROCEEDS TAX—COUNTY TREASURER—PERSONAL PROPERTY TAX—PENALTY AND INTEREST

Held: Net proceeds tax, being personal property tax, it therefore follows that penalty and interest thereon may not be collected.

April 21, 1941.

Mr. Wilbur P. Werner
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Werner:

You have submitted the following:

"It so happens that one of our large producers is delinquent in his net proceeds taxes for the years of 1937, 1938 and 1940 in the approximate sum of \$17,870.00. The County Treasurer intends to collect these back taxes by sale as provided by law, if necessary. The question that arises is: Can penalty and interest be collected on net proceeds taxes that are delinquent?"

The Montana State Constitution provides in Section 3 of Article XII as follows:

"Section 3. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes,

shall be taxed at its value for such other purposes, as provided by law; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law."

Our Supreme Court—in construing the above section—stated the purpose of the framers of the Constitution in adopting Section 3, Article XII, was to provide a **special method** for the assessment and taxation of mining property, the theory adopted being that such property should be regarded **real as to surface value, and personal as to the surface contents.**

State ex rel. Hinz v. Moody, 71 Mont. 473, 230 Pac. 575.

Section 2090.2, Revised Codes of Montana, 1935, provides for the lien of this tax, as follows:

"2090.2. **Lien of Tax.** The tax so assessed on net proceeds shall be and shall constitute a lien upon all of the right, title and interest of such operator in or to such mine or mining claim and upon all of the right, title and interest in or to the machinery, buildings, tools and equipment used in operating said mine or mining claim."

Section 2095, Revised Codes of Montana, 1935, provides for the enforcement of the payment of the taxes as follows:

"The taxes on such net proceeds must be levied as the levy of other taxes are provided for, and every such tax is a lien upon the mine or mining claim from which the ore or **mineral products** or deposits are mined or extracted, and is a **prior lien upon all personal property** and improvements used in the process of extracting such ore or mineral products or deposits; provided, however, that such personal or real property is owned by or under lease of the person, partnership, association, or corporation who extracted said ore, or mineral products or deposits."

"The tax on such net proceeds may be collected, and the payment thereof, enforced, by the seizure and sale of the **personal property** upon which the said tax is a lien, in the **same manner as other personal property is seized** and sold for delinquent taxes, or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes or by the institution of a civil action for its collection in any court of competent jurisdiction; **provided, however,** that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax is collected.

It will be noted the foregoing statute provides four methods for the use of the Treasurer in the collection of this tax:

First: By seizure and sale of the personal property as other personal property is seized and sold.

Second: By the sale of the mine, mining claim and improvements, or the lease and improvements, the interest in real estate of the owner or, under lease, the one extracting the mineral product.

Third: By the institution of a civil action to enforce the lien.

Fourth: By any two or all of the foregoing methods which may be used until the full amount of such tax is collected.

The Legislature provided the County Treasurer with every facility of the law to effectuate the prompt collection of this tax, so as to prevent the possibility of any of its escaping taxation.

Under any and each of the foregoing methods provided for the collection of net proceeds taxes, such tax is a tax on personal property, and it is presumed the County Treasurer will perform his duty. It therefore follows penalty and interest may not be collected on net proceeds taxes.

Sincerely yours,

JOHN W. BONNER
Attorney General