

Opinion No. 167.

Taxation—Meters, Parking—
Parking Meters.

Held: Property leased by a city under an agreement with an option to purchase, title to remain in the lessor until said agreed value is paid in full, is not exempt from taxation by the county under Article XII, Section 2., of the Montana Constitution as being "property of a city." Nor is such "property exempt from taxation by the county by reason of a provision in the agreement that the city will reimburse the lessor for any taxes levied on such property.

June 13, 1946.

Mr. Melvin N. Hoiness
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Hoiness:

I am in receipt of your letter requesting my opinion on the question whether or not parking meters recently installed by the City of Billings are subject to a personal property tax by the County of Yellowstone. The facts are as follows:

The city entered into an agreement with the meter company under

a trial lease, the agreement providing the meter company would install the meters under a lease arrangement whereby the city has the option to purchase the meters at any time or terminate the agreement at the expiration of nine months from the date of installation. The agreement provides specifically:

"It is understood and agreed that the title to all said meters shall be and remain in The Meter Company until and unless the full agreed value thereof, as aforesaid, shall have been paid in cash to The Meter Company, including the rentals aforesaid.

"The Meter Company agrees that when The City pays it as rentals the full agreed value of said meters, as aforesaid, it will deliver to The City a bill of sale therefor, free and clear of all encumbrances."

The agreement also contains this provision:

"If at any time prior to the payment in full to The Meter Company of the agreed value, as aforesaid, of all said meters any taxes are levied on meters installed, such as personal property tax, sales tax or use tax, such taxes will be advanced by The Meter Company and the city shall reimburse the Meter Company in full from the gross receipts of the meters, before the net revenue is computed for the purpose of paragraph five (5) hereof."

The county assessor has assessed the meters and notified the meter company of the tax due. The meter company has referred the matter to the city, and the county treasurer desires an opinion because of the fact the city has taken the position that since the city is eventually responsible for the tax, the levy would be, in effect, a direct levy against the city, contrary to the provisions of Section 2 of Article XII, Montana Constitution.

Section 2 of Article XII of the Montana Constitution provides in part as follows:

"The property of the United States, the state, counties, cities, towns . . . shall be exempt from taxation."

Section 17 of Article XII defines "property," as the term is used therein, to include "moneys, credits, bonds,

stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership." "Ownership of a thing" is defined in Section 6663, Revised Codes of Montana, 1935, as "the right of one or more persons to possess and use it to the exclusion of others."

The question of "ownership" is all-important, for Section 2 of Article XII of the Montana Constitution declares "The property of . . . cities . . . shall be exempt from taxation . . ." The section is to be strictly construed and it contains a description of all property which may be exempted from taxation. (Town of Cascade v. County of Cascade, 75 Mont. 304, 308, 243 Pac. 806.) The question is then whether the property is that of the city so as to come within the exemption provision of Section 2 of Article XII of our Constitution.

It is my opinion the property is not that of the city, does not become such by reason of the reimbursement provision in the agreement, and is not exempt from the personal property tax by the county.

In *Automatic Voting Machine Corp. v. Maricopa County* (1937), 70 Pac (2d) 447, the Arizona court considered a similar question, whether or not voting machines manufactured by plaintiff corporation and let to defendant county under written agreement were property of defendant county and therefore exempt from taxation. The agreement between plaintiff corporation and defendant county for the machines was in many respects similar to the agreement at hand. The court held the contract was an option to purchase rather than a conditional sales contract. In such merely the legal but also the equitable case, plaintiff was the owner of not title to the property until the option was fully exercised so that plaintiff was under the duty of conveying title to the defendant. Therefore, plaintiff could not recover a tax to which the only objection made was that the property belonged to the defendant rather than the plaintiff.

In the present case, the meter company, under the terms of the contract, is owner of the legal and equitable title to the property until the full value thereof shall have been paid to the meter company by the city. As such, the meter company is liable for the

payment of the tax levied by the county, as all property in the state is subject to taxation except as specifically exempted by Section 1998. (Section 1997, Revised Codes of Montana, 1935.) The property is not that of the city. The city cannot claim the property is exempt as being property of the city and at the same time admit the legal and equitable title to rest in the meter company.

The agreement between the city and the meter company for reimbursement of taxes paid does not operate to change the status of the property, and so far as the county is concerned, has not effect whatever as to assessment of taxes by it.

It is therefore my opinion that property leased by a city under an agreement with an option to purchase, title to remain in the lessor until said agreed value is paid in full, is not exempt from taxation by the county under Article XII, Section 2, of the Montana Constitution as being "property of a city." Nor is such property exempt from taxation by the county by reason of a provision in the agreement that the city will reimburse the lessor for any taxes levied on such property.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General