

OPINION
50-188

August 10, 1950 (OPINION)

TAXATION

RE: Tax on Property Removed from City Limits After Assessment Date

Your letter of August 9, 1950, re - the above matter has been received.

You state that certain real property was regularly withdrawn from the city limits of the city of Bismarck after the assessment for 1950 had been made, but before the tax levy based on such assessment was made.

You ask our opinion "as to whether or not the city taxes can be levied against the property for 1950, the property being no longer a part of the territory within the corporate limits."

This office has repeatedly held that property within a taxing district on the first day of April is assessable in such district even though removed therefrom before actual assessment; that property brought into such district after April first is not assessable for the current year; that tax liability is determined solely by the status of such property on April first, and has made various holdings in line with these basic principles.

Applying these principles to your problem, it would appear that the tax liability of the property in question was fixed and must be determined by its status on April 1, 1950; it was then within the city limits of the city of Bismarck; its tax liability on the 1st of April was that of all property within the city limits; that is for the city taxes of 1950. Therefore, it was liable for assessment and levy for city taxes for 1950.

This conclusion is in line with the conclusions of the Mississippi court in a case involving the identical facts we have before us.

The court said:

The material facts in the case are not disputed, and are in substance as follows: On the 2nd day of May, 1911, an ordinance was passed by the municipal authorities of the town of Charleston, becoming effective a short time thereafter, contracting the municipal limits so as to exclude therefrom the mill and plant of the appellee company, consisting of both real and personal property. Prior to this ordinance and on February 1st of that year, this property of the appellee was within the municipal limits of Charleston. The municipal assessments and levy of taxes were both made after the above municipal ordinance had become effective.* * *

We quote from the opinion:

The only question presented to this court for determination is

whether or not the appellee is liable for municipal taxes for the year 1911 on its property which was included within the municipal limits on and before the 1st day of February, 1911, and which was excised or excluded from these limits before the assessment and levy of these taxes. * * *"

The contention of the appellant is that the liability for taxes under our laws is fixed as of February 1st. * * *"

Section 4258 provides that every person shall be assessed in the county and in the municipality in which he resides at the time of the assessment and that real property and personal property shall be assessed in the county in which the same may be on the 1st day of February of the current year. * * *"

It is clearly the scheme of taxation in this state, as enunciated by the above sections of the Code, that all assessments of property shall be made as of February 1st of that year. The question to be answered by the taxpayer is: What property did you own on the 1st day of February of this year? The liability of the property to taxation attaches on February 1st. The liability of the owner of property on February 1st is to pay taxes on all property owned by him on this date. Until the levy and assessment have been made, the amount of these taxes has not been ascertained, but the liability of the owner to pay these taxes exists, subject to the assessment and levy, which are made at a later period. The liability of the owner for these taxes and of the property to be taxed is fixed by the situs of the property on the 1st day of February. The power of the municipality to tax this property accrued on February 1st because the property was within its jurisdiction or municipal limits at that time. * * *"

It is essential that there should be a certain date fixed by law for the taxation of property, and our laws have fixed this date as February 1st. (North Dakota fixes this date as of April 1st). The inquiry directed to persons is: What property did you own on that date? The assessment by the assessor and the tax levy are made later on in the year. As is said in the opinion of the court by Judge Truly in the case of Gerard v. Duncan, 84 Miss. on page 734, 36 South, on page 1035 (66 L.R.A. 461):

The property is assessed for purposes of taxation to the person legally holding the same on the 1st day of February annually."

In the case of City of Gulfport v. Todd, 92 Miss. 418, 46 South, 541, the court held that, where a municipality extended its limits after the 1st of February, the property thus taken in was not subject to municipal taxes for that year. In the case of Wildberger v. Shaw, 84 Miss. on page 444, 36 South, on page 539, the court held that: 'Lands bought from the state on February 2d of any year are no more taxable for that year than are lands bought on January 31st of the next year. February 1st is the day which fixes liability to taxation.'

Since the property was subject to taxation on February 1st, then the liability of the owner of the property to pay taxes for that year attached on that day. The property may be removed from the municipality or from the state the very next day, but this in no wise affects the liability of the owner for the taxes which accrued the day before. Endless confusion would otherwise follow. A man might own a thousand head of fine cattle on the 1st day of February, keep them until the day before his taxes were assessed, remove them from the state, and thus claim that he owed no taxes on these cattle, because they were beyond the jurisdiction of the municipality or of the state, on the day the assessment was actually made. Or he might have the cattle in Hinds county on February 1st, and then drive them over into Rankin county before the assessment was made, and thereby escape liability for taxes for that year. This result would follow if the contention of the appellee in this case were sound."

It therefore follows that the appellee in this case is liable for the municipal taxes here sued for. * * *" (Adams v. Lambfish Lumber Co., 114 Miss. 534, 75 So. 378).

This case is cited in McQuillin, Revised Vol. 6, sec. 2550, page 383.

We believe the reasoning of the Mississippi court in this case is sound, and that the Mississippi statutes parallel our own.

Therefore, it is our opinion that the property in question, which was within the corporate limits of the city of Bismarck on April 1, 1950, is liable for municipal taxes levied upon the assessment thereon for the year of 1950.

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Attorney General