

to assessment
TAXATION: Property subject to assessment
Baryties, lumber.
and ties.

9742-9756 RS Mo 1924

June 7th, 1933



Hon. John A. Eversole,
Prosecuting Attorney,
Washington, County
Potosi, Mo.

My dear Mr. Eversole:

Acknowledgment is hereby made of your request of
June 5th, for an opinion of this office which request
reads as follows:

"There are thousands of tons of Baryties,
a certain mineral mined in this county,
stacked up waiting for higher prices.
The county assessor wants to know if
this mineral is taxable. Also whether
ties and lumber stacked in the woods,
on the Rail Road Right of way and on
mill yards is taxable.

I wish you would give me your opinion
on this matter as the assessor has ask-
ed me. I do not believe that things
of this kind have been assessed here
in the past, especially the Baryties."

In considering this question, it is well to have
before us the sections of the statutes pertinent thereto.

"Section 9742 Property taxable for state
purposes. For the support of the govern-
ment of the state, the payment of the
public debt, and the advancement of the
public interest, taxes shall be levied
on all property, real and personal, except
as stated in the next section."

The exceptions as stated in the next section,
clearly are not such as would include the subjects of your
inquiry. The section pertaining to the assessment of the
taxes reads as follows:

"Section 9756, Time for making assessment-
what lists shall contain. The assessor

**TAXATION: Property subject to assessment
Baryties, lumber and ties.**

*** shall, between the first days of June and January *** proceed to take a list of the taxable personal property ***. Such lists shall contain; *** eleventh, all other property not above numerated***, under this head shall be included all pleasure carriages of all kind; *** and every other species of property not exempt by law from taxation.

It is apparent from your inquiry that the Baryties, ties and lumber have all been severed from the soil and therefore lost their character as real property and become personalty. Being personal property, the immediate question for our consideration is whether or not provisions has been made for the taxation of this particular personalty. As stated by the Supreme Court in *State ex rel: v. Lesser, 237 Mo. 1. c. 318.*

"The sovereign power of the state to require its citizens to pay taxes on all their personal property *** may ** be conceded. But conceding that the state has the power to tax such interests, it does not follow that such interests are taxed unless the law so declares".

After reading the full text of Section 9756, it is clear that the subjects of your inquiry, to be assessable, must fall within the provisions of clause eleven, as hereinbefore set out. Our Supreme Court in the case of *State ex rel Globe-Democrat Publishing Company v. Gehner*, reported in 294 S. W. 1017, held clause eleven to be sufficiently comprehensive to include every class of personal property. The question in this case was whether or not the accounts receivable of the Globe-Democrat Publishing Company were subject to assessment as personal property. The court held that they should be assessed under clause eleven of Section 9756, (Section 12766 R. S. Mo. 1919) as the rule of *ejusdem generis* did not apply. The court stated as follows on page 1018:

"If it appears that the Legislature intended, in the use of general words, to go beyond the particular ones, the rule is not applicable. In this case it may without violating the rules of construction, be held that the particular words to be used in the return made by the taxpayer exhausted the classes there enumerated and thus authorized the use of general words to include other classes of property for the

TAXATION: Property subject to assessment
Baryties, lumber and ties.

purpose of taxation, * * * We are therefore, of the opinion that the rule of ejusdem generis cannot be invoked in this case to relieve accounts receivable from the burden of taxation. To conclude otherwise would be, despite the comprehensive purpose of the statutes of this character, to hold that the general words in section 12766, as amended, and the statement required to be made in the taxpayers oath as to the return of this class of property, are meaningless."

It is therefore the opinion of this office that the Baryties, ties and lumber are proper subjects of taxation, due regard being given to section 9745, 9763, and 9764 in determining the proper authority to make the assessment.

Respectively Submitted,

HARRY G. WALTNER, Jr.
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney-General.

HGW/lm