

Opinion No. 3.

**Tax Sales—
Redemption From Tax Sales—
Sales, Tax.**

Held: Redemption may be made from tax sales prior to effective date of Chapter 39, Laws of 1941, under Section 2201, Revised Codes of Montana, 1935.

December 11, 1942.

Mr. William F. Shallenberger
County Attorney
Sanders County
Thompson Falls, Montana

Dear Mr. Shallenberger:

You have requested the opinion of this office as to the effect of Chapter 39, Laws of 1941, on tax sales made prior to its effective date.

The chapter in question amends Section 2201, Revised Codes of Montana, 1935, with reference to the time within which redemption may be made from tax sales. The chapter provides Section 2201 is "amended to read as follows;" further, that the provisions of the act shall apply only to all tax sales held after its effective date. There is no saving clause with reference to tax sales made before its effective date.

It is true the general rule is when, as here, the legislature declares an existing statute is "amended to read as follows," the new act takes the place of the old. Only so much of the old as is repeated in the new is continued in force, and all portions omitted from the new act are repealed (*Continental Supply Co. v. White*, 92 Mont. 254, 263, 12 Pac. (2nd) 569; *Continental Oil Co. v. Montana C. Co.*, 63 Mont. 223, 230, 207 Pac. 116). But as pointed out in *State ex rel. Nagle v. The Leader Co.*, 97 Mont. 586, 591, 37 Pac. (2nd) 561, the rule is based upon the premise that, by the use of such language, the legislature evinces the intention to make

the new act a substitute for the amended statute, exclusively.

It follows, in the construction of the chapter, the intention of the legislature becomes important, and that an attempt must be made to ascertain and give effect to this intention. (*State v. Stewart*, 53 Mont. 18, 161 Pac. 309; *State v. Board of Commissioners of Cascade County*, 89 Mont. 37, 296 Pac. 1).

By the enactment of Chapter 39, the law with reference to time of redemption was made the same as in Section 2201, Revised Codes of Montana, 1921, before amendment by Section 1, Chapter 125, Laws of 1933.

At the time of the enactment of Chapter 39, persons whose lands had been sold for delinquent taxes were possessed of a valuable right of redemption, and in the absence of direct statement by the legislature, it is not to be presumed the legislature had any intention of destroying this right.

As pointed out by the Supreme Court in *State ex rel. Federal Land Bank v. Hays*, 86 Mont. 58, 62, 282 Pac. 32:

"It is not the policy of the law that any man should forfeit his estate because from inability, or even from negligence, he has failed to meet his engagements or to perform his duties by some exact day which has been prescribed by statute. On the contrary, it is for the welfare of every community that the law should favor the citizen in all reasonable measures for the preservation of his estate against losses which might result from his misfortune or his faults, extending to him all the liberality that is consistent with justice to others and to a proper regard for the interest of the public." (4 *Cooley on Taxation*, Section 1558).

"Redemption statutes are regarded favorably and construed with liberality. (4 *Id.*, Section 1562.) Abundant reason for this is assigned in the cases which recognize the rule. It has been justly remarked that the right of the government to sell lands for taxes, as it is accustomed to do, can only be maintained on 'the absolute sovereignty of the state in the exercise of its taxing power. But it is a severe exercise of power. To divest ownership without personal notice and without direct compensation, is the instance in which a constitutional government approaches most nearly

to an unrestrained tyranny. Whatever tends to modify this right is favorable to the citizen, and ought to be liberally construed, on the principle that remedial statutes are to be beneficially expounded. Redemption is the last chance of the citizen to recover his right of property." (4 Id., Section 1562.)

The sale of property for delinquent taxes is merely a device to compel the owner to pay his share of the burden of government. In this connection, the Supreme Court, in *State ex rel. City of Billings v. Osten*, 91 Mont. 76, 79, 5 Pac. (2nd) 562, stated:

"The sale of property for taxes is a device to compel the owner to pay his share of the burden of government. If he does not pay within the time allowed, his property will be sold subject to redemption, but with added burdens consisting of penalties, interest and costs. The policy of the state is to collect the taxes, not to divest the owner of the property to which the lien for taxes attaches."

And in reference to the applicable law covering the right of redemption, the Court in the above case stated (page 81):

"The right of property acquired by the purchaser at this sale, and the right of redemption remaining to the owner, must both be governed by the law in force at the time of sale. Neither in our judgment, could be either abridged or enlarged by subsequent legislation. This is unquestionably so as to the right of the purchaser."

It is therefore my opinion redemption can be made from tax sales prior to the effective date of Chapter 39, Laws of 1941, under the provisions of Section 2201, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY
Attorney General