

Opinion No. 75**State Auditor—Warrants, Cancellation of—Income Tax Refund Act—
Income Tax Withholding Fund**

Held: Provisions for cancellation of warrants contained in Section 84-4953, RCM, 1947, have no application to tax refund warrants issued under the provisions of Section 84-4957, RCM, 1947.

September 29, 1958

Mr. John J. Holmes
State Auditor & Ex Officio
Commissioner of Insurance
Capitol Building
Helena, Montana

Dear Mr. Holmes:

You have requested my opinion on the following question: Must warrants drawn upon the "Income Tax Refund Account" created by Chapter 211, Laws of 1957 (Section 84-4957, RCM, 1947) be voided if not presented within one year from the date of issuance?

This question is raised by an apparent conflict between Sections 84-4953 and 84-4957, RCM, 1947.

Section 84-4953, *supra*, was enacted as Section 12 of Chapter 246, Laws of 1955, which set up a system of income tax withholding in Montana. Section 84-4957 was a single separate enactment passed in 1957 (Chapter 211, Laws of 1957) creating an "Income Tax Refund Account" which is available for all refunds of income tax.

These two sections are very similar in language and intent. Section 84-4953, *supra*, provided that "All moneys paid by employers hereunder shall be deposited with the state treasurer, and by him credited to a fund, hereby established, denominated the income tax withholding fund, and the refunds hereinbefore provided for shall be paid from such fund . . ." Its obvious purpose was to set up a fund from which the refunds authorized by the Withholding Tax Act (Section 84-4952, RCM, 1947) could be paid.

Section 84-4957 created the "Income Tax Refund Account" which provided in part that "All money received by the state treasurer in payment of taxes levied under the provisions of state income tax shall be deposited in said fund . . ."

Since Section 84-4957 is the later enactment it must control in case of a conflict between the sections. As Section 84-4953 provides that withholding tax collections shall be placed in the "Income Tax Withholding Fund" and Section 84-4957, *supra*, provides that **all** income tax collections shall be deposited in the "Income Tax Refund Account" there is obviously a conflict. Therefore, Section 84-4957, *supra*, the

later legislative enactment, controls, and withholding tax monies, like all other income tax receipts, must now be paid into the "Income Tax Refund Account".

Section 84-4957 has no provision for cancellation of warrants not presented within one year. The provisions of Section 84-4953 cannot apply since there is no longer an "Income Tax Withholding Fund" and the cancellation provisions refer only to this fund.

It is therefore my opinion that the provisions for cancellation of warrants not presented within one year contained in Section 84-4953, RCM, 1947, have no application to refund warrants issued under Section 84-4957, RCM, 1947.

Very truly yours,
FORREST H. ANDERSON
Attorney General