

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 70

COUNTY GOVERNMENT - Interest rate on delinquent property taxes;
DEPARTMENT OF REVENUE - Interest rate on delinquent property taxes;
FINES - Interest rate on delinquent property taxes;
INTEREST - Interest rate on delinquent property taxes;
PROPERTY, REAL - Interest rate on delinquent taxes;
TAXATION AND REVENUE - Interest rate on delinquent taxes;
MONTANA CODE ANNOTATED - Sections 1-2-109, 15-16-102.

HELD: Interest on all taxes delinquent prior to December 31, 1980, should be $\frac{2}{3}$ of 1% per month until December 31, 1980. Interest on all taxes delinquent January 1, 1981 to November 30, 1981, should be $\frac{5}{6}$ of 1% per month for the first \$3,000 in taxes, and 1% per month on all remaining delinquent taxes, until November 30, 1981. Finally, the interest rate on all delinquent taxes after November 30, 1981, should be a uniform $\frac{5}{6}$ of 1% per month.

OPINIONS OF THE ATTORNEY GENERAL

19 August 1982

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Gentlemen:

You have requested my opinion concerning the interest rate on delinquent taxes as per section 15-16-102, MCA.

Prior to 1981 the interest rate on delinquent taxes was 2/3 of 1% per month. § 15-16-102, MCA (1979). Then, the regular 1981 legislative session amended section 15-16-102, MCA, to provide an interest rate of 5/6 of 1% per month on the first \$3,000 of delinquent taxes, and 1% per month on the remaining delinquent taxes. 1981 Mont. Laws, ch. 576, § 2. Subsequently the November 1981 special legislative session amended section 15-16-102, MCA, to provide for a uniform interest rate of 5/6 of 1% per month on all delinquent taxes. 1981 Mont. Laws 1st Spec. Sess., ch. 6, § 2. The issue is whether either amendment is retroactive.

When determining whether a statute is retroactive, the intent of the Legislature must be taken from the statute, and no other source. Penrod v. Hoskinson, 170 Mont. 277, 281, 552 P.2d 325, 327 (1976). Montana has a statutory and case law presumption that a statute is not retroactive. § 1-2-109, MCA; Burr v. Department of Revenue, 175 Mont. 473, 476, 575 P.2d 45, 47 (1978); Penrod v. Hoskinson, 170 Mont. 277, 281, 552 P.2d 325, 327 (1976). Thus, all reasonable doubt will be resolved against retroactive operation. Burr, 175 Mont. at 476, 575 P.2d at 47.

But, "If it is unmistakable that an act was intended to operate [retroactively], that intention is controlling..." Davidson v. Love, 127 Mont. 366, 370, 264 P.2d 705, 707 (1953).

OPINIONS OF THE ATTORNEY GENERAL

The Legislature clearly intended the first 1981 amendment to section 15-16-102, MCA, to be retroactive. The amendment was approved May 1, 1981, but it specifically provides that "This act applies to taxes assessed and levied after December 31, 1980." 1981 Mont. Laws, ch. 576, § 4. Thus, the first amendment to section 15-16-102, MCA, is retroactive to December 31, 1980. See Mills v. State Board of Equalization, 97 Mont. 13, 22, 33 P.2d 563, 566 (1934) (retroactive income tax law upheld); State ex rel. Rankin v. District Court, 70 Mont. 322, 332, 225 P. 804, 808 (1924) (retroactive inheritance tax upheld); cf. Webster v. Auditor General, 80 N.W. 705, 707 (Mich. 1899) (retroactive statute, increasing interest on delinquent property taxes, upheld).

The second 1981 amendment to section 15-16-102, MCA, was clearly not intended to be retroactive. The amendment by the 1981 special legislative session provides that:

This act is effective on passage and approval and applies to real and personal property taxes that become due on or after November 30, 1981, or that became due prior to November 30, 1981, and remain unpaid on or after November 30, 1981. [Approved Nov. 25, 1981. 1981 Mont. Laws 1st Spec. Sess., ch. 6, § 4.]

Nothing in the second 1981 amendment indicates it should be retroactive, and it is therefore presumed to be prospective only. See State, By and Through State Hwy. Com'n v. Marsh, 175 Mont. 460, 468, 575 P.2d 38, 43 (1978) (old 6% interest rate used until effective date of amendment, then new 10% interest rate on condemnation awards was applied); cf. People v. Sexton, 29 N.E.2d 469, 471 (N.Y. 1940) (old interest rate on delinquent taxes used until effective date of amendment, then new interest rate used).

THEREFORE, IT IS MY OPINION:

Interest on all taxes delinquent prior to December 31, 1980, should be 2/3 of 1% per month until December 31, 1980. Interest on all taxes delinquent January 1, 1981 to November 30, 1981, should be 5/6 of 1% per month for the first \$3,000 in taxes, and 1% per month on all remaining delinquent taxes, until November 30, 1981.

OPINIONS OF THE ATTORNEY GENERAL

Finally, the interest rate on all delinquent taxes after November 30, 1981, should be a uniform 5/8 of 1% per month.

Very truly yours,

MIKE GREELY
Attorney General