

**Taxes, Delinquent. Notice. Republication. Personal Property.
Delinquent Taxes. County Commissioners, Power to
Remit or to Cancel Taxes.**

Boards of County Commissioners have no authority to remit or to cancel taxes lawfully levied or assessed.

County Boards of Equalization may correct erroneous assessment and county commissioners may refund taxes erroneously paid.

Republication of delinquent personal property tax lists not required in certain cases.

Helena, Montana, May 16th, 1906.

Hon. H. S. Green, County Attorney, Great Falls, Montana.

Dear Sir: I am in receipt of your letter of the 11th inst., in which you submit for the consideration of this office a proposition, substantially as follows :

“Has the Board of County Commissioners authority to direct the county treasurer to cancel unpaid personal taxes which have been delinquent for more than three years?”

Boards of county commissioners are not given any authority to remit or to cancel taxes lawfully levied and assessed. The County Board of Equalization may correct an erroneous assessment even to the extent of ordering the whole assessment stricken from the roll, if it is all error (Sec. 3780 et seq., Pol. Code), or a tax paid more than once or erroneously or illegally collected may be refunded (Sec. 3913, Pol. Code); but a tax lawfully levied, based upon a legal assessment continues to be a charge until paid. The Statute of Limitations, to be effectual, must be pleaded by the taxpayer.

It is the duty of the county treasurer to collect taxes due on personal property, where real estate is not liable therefor, by seizure and sale of

the property (Sec. 3901 Pol. Code, and laws of 1903, p. 225), or to bring suit where the person had removed from the county. Sec. 3917 Pol. Code.

Every tax has the effect of a judgment (Sec. 3827 Pol. Code) but a personal property tax is not a lien on the personal property assessed until seizure is made.

Walsh v. Croft, 27 Mont. 407.

It is presumed that the officers charged with the collection of taxes will apply all the means at their command for making collection before the statute of limitations has run. Hence the law does not contemplate the continued republication of old delinquent tax lists.

While the commissioners may not cancel or remit lawful taxes, whether delinquent or not, the law does not command the republication of delinquent tax lists where the property no longer exists, has passed into an innocent third party's hands, or has been removed from the county; and if the property is still within the county and owned by the same person who owned it at the time of assessment, the treasurer should seize and sell the property as provided in said Section 3901 of the Political Code, in which case no republication will be required. This latter section confers authority to seize and sell the property after the delinquent tax list has once been published. The law of 1903, p. 225, relates to the seizure and sale, under the conditions therein named, prior to any publication at all, and, of course, applies only to the current year.

Your opinion given to the commissioners as stated in your letter is affirmed.

Yours very truly,

ALBERT J. GALEN,

Attorney General.