

**Taxes Paid Under Protest. Limitation, Statute Of.**

A taxpayer who pays his taxes under protest wherein the facts do not come within the provisions of Section 4024-A, Chap. 108, p. 304, Laws 1905, has two years from the date of said payment

within which to commence an action under the provisions of Section 4024, Political Code.

It is the duty of the County Treasurer to hold the taxes so paid until the determination of any action brought for the recovery thereof, and if no suit is commenced within the two years it is then the duty of the County Treasurer to pay the State's portion of the same over to the State Treasurer.

Helena, Montana, April 23, 1907.

Hon. Henry R. Melton,  
County Attorney,  
Dillon, Montana.

Dear Sir:—

We have your request for an opinion as to how long the County Treasurer must hold the taxes that have been paid to him under the provisions of Section 4024, Political Code.

I do not believe that Section 4024-A, Chap. 108, Laws 1905, applies to the taxes paid by a taxpayer who has not appeared before the County Board of Equalization, as provided in said Section 4024-A. If the County Treasurer should pay money so received by him to the State Treasurer before the time in which the protesting taxpayer might commence an action it would be very difficult to have this money repaid by the State Treasurer, for the reason that the amount so received by the State Treasurer would be placed in the General Fund, and there is no provision of law whereby the State Treasurer might return the same to the County Treasurer in case a suit was brought by the protesting taxpayer. Hence, the only safe course in the matter is for the County Treasurer to hold the money for the full term of two years from the date of its receipt, and the statute of limitations having then run against the taxpayer, the County Treasurer should then pay the money over to the State Treasurer.

Subdivision I, Sec. 524, Chap. CXXVIII, p. 293, Laws 1903.

I agree with you that the Legislature, while fixing a limitation for Section 4024-A, might have also made it apply to Section 4024, but it did not do so; hence the only limitation that can be invoked is the general statute of limitations above quoted.

Yours truly,

ALBERT J. GALEN,

Attorney General.